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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~221~~ 109

JOHNSON HAGOOD, COMPTROLLER GENERAL OF THE STATE OF SOUTH CAROLINA; S. L. LEAPHART, TREASURER OF THE STATE OF SOUTH CAROLINA; P. C. GAILLARD, COUNTY TREASURER OF CHARLESTON COUNTY; W. H. GIBBES, COUNTY TREASURER OF RICHLAND COUNTY; H. F. ALEXANDER, COUNTY TREASURER OF OCONEE COUNTY; AND WILLIAM McGUKIN, COUNTY TREASURER OF ANDERSON COUNTY, APPELLANTS,

vs.

AMOS D. WILLIAMS.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED OCTOBER 13, 1882.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 381.

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vs.

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APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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1 THE UNITED STATES OF AMERICA, } *to wit:*
District of South Carolina, }

At a circuit court of the United States for the fourth circuit in and for the district of South Carolina, begun and holden at Charleston, in the district aforesaid, on the first Monday in April, 1881, before the Honorable Hugh L. Bond and the Honorable George S. Bryan, judges of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

And on the 10th day of April, A. D. 1881, came into court the complainant, by his solicitor, Thomas S. Cavender, and obtained the following order, which order is in the words and tenor following:

Order.

2 THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In the Circuit Court. In Equity.

AMOS D. WILLIAMS, Complainant,
vs.
JOHNSON HAGOOD, Comptroller General, *et al.*, Defendants.

On hearing the mandate of the Supreme Court of the United States in the above-entitled cause, and on motion of Thomas S. Cavender, complainant's solicitor—

It is ordered that the complainant's bill of complaint be dismissed, without prejudice to his right to bring and prosecute another suit when he shall be in a condition to establish any equity in himself.

It is further ordered that the clerk of this court do tax the costs heretofore accrued in this action.

HUGH L. BOND.

April 10, 1879.

Be it remembered that heretofore, to wit, on the 23d day of October, in the year of our Lord one thousand eight hundred and seventy-nine, the said Amos D. Williams impleaded the said Johnson Hagood, comptroller general of the State of South Carolina; S. L. Leaphart, treasurer of the said State; P. C. Gaillard, county treasurer of Charleston county; W. H. Gibbes, county treasurer of Richland county; H. F. Alexander, county treasurer of Oconee
3 county; William McGukin, county treasurer of Anderson county; John P. Southern and James P. Low, assignees in bankruptcy of the Blue Ridge Railroad Company, in a bill of complaint for relief and injunction, as follows:

Bill.

In the United States Circuit Court, Fourth Circuit, District of South Carolina.

To the judges of the circuit court of the United States for the district of South Carolina:

Amos D. Williams, a resident of the city and State of New York, and a citizen of the State of New York, brings this his bill of complaint, in his own behalf and in behalf of all others holding and claiming in like right with him as to the matters hereinafter stated, who will come in, prove their claims, and contribute to the expenses of this suit, against Johnson Hagood, comptroller general of the State of South Carolina, and who is a citizen and resident of said State; and against S. L. Leaphart, treasurer of the State of South Carolina, and who is a resident and citizen of said State; and
4 against P. C. Gaillard, a citizen of and resident of the State of South Carolina, county treasurer of Charleston county in said State; and against W. H. Gibbes, county treasurer of Richland county in said State; and against H. F. Alexander, county treasurer of Oconee county in said State; and against William McGukin, county treasurer of Anderson county in said State; and against John P. Southern and James P. Low, assignees in bankruptcy of the Blue Ridge Railroad Company—all of whom are residents of and citizens of the State of South Carolina; and thereupon your orator complains and states:

First. The Legislature of the State of South Carolina, by an act entitled "An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company, by providing for the securing and destruction of the same," and which act, according to the constitution of the said State, became a law of the said State on the 2d day of March, in the year of our Lord 1872, did, in the preamble to the said act, set forth and declare in these words: "That whereas the State of South Carolina has, by and in pursuance of the provisions of an act, approved the 15th day of September, 1868, entitled 'An act to authorize additional aid for the Blue Ridge Railroad Company in South Carolina,' endorsed a guaranty of the faith and credit of the State on four millions of dollars of bonds issued by the said Blue Ridge Railroad Company, comprehending the Blue Ridge Railroad Company, in South Carolina; the Blue Ridge Railroad Company, in Georgia; the Tennessee River Railroad Company, in North Carolina; the Knoxville and Charleston Railroad Company, in Tennessee; and the Pendleton Railroad Company, in South Carolina, for the purpose of aiding the speedy completion of the said railroad, which bonds are liable for the debts of the said railroad companies; and whereas the present condition of the finances of the State and of the said companies is such as to make the further continuance of said bonds on the market inexpedient and inadvisable, and a serious injury and prejudice to the credit of the State; and whereas the existence of the said four millions of dollars of bonds so guar-

anteed creates a large liability upon the part of the State, which the treasurer may be required to meet at unforeseen and inopportune times; and whereas the liability of the State on account of such guaranty should be faithfully met and discharged:
5 Therefore, in order to secure the recovery and destruction of the bonds and coupons of the said company, issued under and in pursuance of the provisions of the aforesaid act, now sold or pledged in the city of New York and elsewhere, and to relieve the State of all liabilities whatsoever, by reason of its endorsement and guaranty of said bonds," it then did proceed to enact and declare that "the State treasurer is hereby directed, with the consent in writing of the president of the Blue Ridge Railroad Company in South Carolina, to require the financial agent of the State in the city of New York immediately to deliver to the State treasurer all the bonds of the Blue Ridge Railroad Company endorsed and guaranteed by the State of South Carolina which are now in his possession and held by him as collateral security for advances made by the said financial agent by the order of the financial board to the Blue Ridge Railroad Company; and upon the delivery of the said bonds, the treasurer is hereby required to cancel the same in the manner hereinafter directed, and the said Blue Ridge Railroad Company shall thereupon be discharged from all liability to the State on account of such advances."

In the next section of the said act it is provided that upon the surrender by the said company to the State treasurer of the balance of the said four millions of dollars of bonds issued by the said Blue Ridge Railroad Company and guaranteed by the State the State treasurer is hereby authorized and required to deliver to the president of the Blue Ridge Railroad Company in South Carolina treasury certificates of indebtedness (styled revenue bond scrip) to the amount of one million eight hundred thousand dollars, the said certificates to be issued in the manner hereinafter directed; and if the said company shall not be able to deliver all of said bonds at one time, the treasurer is authorized and required to deliver to the said president such amounts of said treasury certificates as shall be proportioned to the amount of bonds so delivered.

The next section of the same act declares that the State treasurer is authorized and required to have printed or engraved on steel, as soon as possible, treasury certificates of indebtedness, to be known and designated as revenue bond scrip of the State of South Carolina, in such form as may be designated by the State treasurer and the president of the Blue Ridge Railroad Company in South
6 Carolina, to the amount of one million eight hundred thousand dollars, which revenue bond scrip shall be signed by the State treasurer, and shall express that the sum mentioned therein is due by the State of South Carolina to the bearer thereof, and that the same will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

The next section of the same act, which is the fourth in order, declares that the faith and funds of the State are hereby pledged for

the ultimate redemption of said revenue bond scrip, and the county treasurers are hereby required to receive the same in payment of all taxes levied by the State, except in payment of special tax levied to pay interest on the public debt; and the State treasurer and all other public officers are hereby required to receive the same in payment of all dues to the State; and still further to provide for the redemption of said revenue bond scrip, an annual tax of three mills on the dollar in addition to all other taxes on the assessed value of all taxable property in the State is hereby levied, to be collected in the same manner and at the same time as may be provided by law for the levy and collection of the regular annual taxes of the State; and the State treasurer is hereby required to retire at the end of each year from their date one-fourth of the amount of the treasury scrip hereby authorized to be issued, until all of it shall be retired, and to apply to such purpose exclusively the taxes hereby required to be levied.

The next section of the same act provides that if any such revenue bond scrip is received in the treasury for the payment of taxes, the treasurer be, and he is, authorized by the said act to pay out such revenue bond scrip in satisfaction of any claim against the treasury, except for interest on the public debt.

The sixth section provides for the cancellation of the said bonds by the State treasurer upon the delivery to him of the said bonds. Then the said act provides that when the whole number of said bonds shall have been delivered to the treasurer and cancelled, the lien of the State upon the estate, property, and funds of the said Blue Ridge Railroad Company shall from thenceforth be forever discharged and released; and should the said company be unable from any cause to deliver all of said bonds, such lien shall be discharged and released to any extent which shall be proportional to the amount of such bonds actually delivered.

7 Second. Your orator shows that, in pursuance of the authority and requirements set forth in the third section of the said act, the State treasurer did have such treasury certificates of indebtedness known and designated as revenue bond scrip, in such form and denomination as was determined on by him and the president of the Blue Ridge Railroad Company in South Carolina, for the purposes mentioned in said act, prepared by being printed or engraved to the amount of one million eight hundred thousand dollars, signed by the State treasurer, of which only $1,797,352.94 were issued, expressing on the face thereof all that was required by the said act, and particularly setting forth that such certificates will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

Third. That at the time when the said treasury certificates of indebtedness were signed by the State treasurer to be applied and used for the purposes mentioned in the said act, and to redeem the bonds guaranteed by the State for the principal and interest, a large amount of the bonds of the Blue Ridge Railroad Company, endorsed and guaranteed by the State of South Carolina, had been sold or were pledged for large sums of money borrowed by the said Blue

Ridge Railroad Company, and for the repayment of which said bonds had been pledged to the lenders of such sums.

That such bonds, with the guaranty of the State endorsed thereon, were frequently pledged in open market in the city of New York as collateral security for loans of money, and were also sold and disposed of in the same manner and according to law, which in regard to such bonds holds them negotiable, without protest or notice of any kind by the State or its officers that there was dispute or denial or question of any kind of the liability of the said State.

Fourth. That at the time when the said act of the Legislature of the State of South Carolina was passed, to wit, on the 2d day of March, in the year of our Lord 1872, your orator was the *bona fide* owner and holder of $417,000.00 of bonds of the said Blue Ridge Railroad Company, on which bonds the guaranty of the State of South Carolina was duly endorsed without notice, qualification, or condition; that such bonds he had purchased for value, and which bonds were in themselves perfect and complete contracts by the State for the payment of the principal and interest due and to become due thereon, and were further secured by the mortgage of the estate, property, and funds of the said Blue Ridge Railroad Company to the said State, because of the said guaranty; that so far from the said State or its officers or agents giving notice of any denial of the liability of the State because of its guaranty on the said bonds, all of the proceedings of the Legislature of the State of South Carolina were calculated to inspire unquestionable confidence in its good faith; that, as indicative of this, the Legislature of the said State, by an act approved the 15th September, 1868, entitled "An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina," in the first section of the said act authorized and made it the duty of the said comptroller general, without reference to any provisoes or conditions in former acts, to endorse on the bonds of the said Blue Ridge Railroad Company that the faith and funds of the said State are pledged to the extent of one million of dollars for the punctual payment of principal and interest in aid of the said Blue Ridge Railroad Company, and in the second section of the same act it was further provided that "the faith and funds of the State of South Carolina be, and the same are hereby, pledged to secure the punctual payment of any contracts which shall be made by the Blue Ridge Railroad Company in South Carolina, from any person or persons, corporation or corporations, to an additional amount not exceeding three millions of dollars, either in the United States or Europe, and when such contracts shall be made by bond or bonds, signed by the president of the said company, under its seal, and countersigned by the secretary and treasurer thereof, it shall be the duty of the comptroller general of the State to endorse thereon that the faith and funds of the State of South Carolina are pledged to the faithful performance of the said contract or contracts, as it respects the punctual payment both of the principal and interest, according to the terms of said contract or contracts." To this was added a proviso "that the said bonds, or any part thereof, shall not be used unless upon the

express condition that, upon application to the Congress of the United States, or to private capitalists, the amount of three millions of dollars in currency, or so much as may be necessary, shall be furnished in exchange or upon the security of said bonds;" and the Legislature of the said State subsequently thereto, that is to say, by an act passed the 6th March, 1871, did declare that the proviso hereinbefore just recited is, and was thereby, repealed. Section 4 of this act provided "that * * * the action of the said Blue Ridge Railroad Company in making the bonds authorized under the act of September 15, 1868, and of the comptroller general of the State in endorsing the same, thereby pledging the faith and funds of the State to the payment of said bonds, is hereby ratified and confirmed;" so publicly and in the most authoritative manner giving notice that all limitations upon the powers of the said Blue Ridge Railroad Company in regard to the sale or pledge of the said bonds were altogether removed.

Fifth. That your orator, so possessed of the said bonds, and relying upon the faith of the said State, and of the act of the Legislature of the said State, by which it had caused further notice to be given to all parties of the authority it had given to the State treasurer to redeem the bonds so guaranteed by it in and by the issue of such treasury certificates of indebtedness, called revenue bond scrip, and the purpose for which such authority had been given, when requested to do so, did consent to surrender to the State treasurer said bonds, and in exchange for the said bonds to receive the treasury certificates of indebtedness, the issue of which was authorized by the said act, and did thus comply with the purpose of the State to redeem a large amount of the bonds on which the guaranty of the State was endorsed; and the bonds so redeemed did come into the hands of the treasurer, and were, as your orator is informed and believes, cancelled, and are now in the possession of the State treasurer, and thereby the obligation of the Blue Ridge Railroad Company, by virtue of the said bonds, and the guaranty of the said State, because of its endorsement on the said bonds, and the lien on the estate, property, and funds of the Blue Ridge Railroad Company, are all discharged and forever released; and that this has been done, and the purpose of the said act accomplished by your orator and others, who advanced the money by way of purchase of the said treasury certificates of indebtedness, with which the debts were paid for which the said bonds were pledged, and by redeeming the said bonds from such pledge and restoring the same to the State treasurer, provided for the securing and destruction of the said bonds and the release of the guaranty of the State.

Sixth. That subsequent to the time when your orator, relying on the faith and credit of the said State, did, for the bonds so owned and held by him, surrender the same for the said treasury certificates of indebtedness, and in so doing did cause the said bonds to be redeemed, and so accomplishing the purpose of the said act, and after the bonds so redeemed by such treasury certificates of indebtedness were restored to the State treasurer and so forever discharged the said State from all liability, because of the endorse-

ment of its guaranty on the said bonds, the Legislature of the said State has, by various enactments, impaired the obligation of its contract under the act of the 2d March, 1872. It has, by act of March 13 1872, abolished the office of State auditor, and vested his powers and duties in the comptroller general. By an act approved 22d October, 1873, it repealed the 4th section of the act of 2d March, 1872, by which the State auditor was directed to levy a tax of three mills for the redemption of the said treasury certificates of indebtedness or revenue bond scrip; and by an act approved 22d December, 1873, repealed all laws giving power to the comptroller general in relation to the levy of taxes, requiring the county treasurers to discharge that duty, under the supervision of the comptroller general, but limiting the powers of the county treasurers to the taxes levied by that act, and expressly forbidding the collection of any other tax unless authorized by the Legislature. That the Legislature of the State has thus taken away the power to levy the said tax of three mills for the redemption of the said treasury certificates of indebtedness, as well as the authority of the county treasurers to receive the same in payment of taxes, except taxes to pay interest on the public debt, from all of its officers, in whom strict power was vested at the time when the said act of 2d March, 1872, became a law, and has in all things violated its contract with your orator, and rendered, so far as it could, the treasury certificates of indebtedness, or revenue bond scrip, valueless in his hands.

Seventh. Your orator shows that he is the *bona fide* holder
11 and owner of the said treasury certificates of indebtedness to the amount of $166,000.00; that he became possessed of the same for bonds of the Blue Ridge Railroad Company, guaranteed by the State, which belonged to him *bona fide* and for value, without the knowledge on his part of any objection on the part of the said State; that, on the contrary, the act of the Legislature authorizing the issue of the said certificates of indebtedness by the said State treasurer, as also the purpose for which such issue was made, were publicly known. No notice of any purpose on the part of the State to repudiate its obligations under the said act was given or even suspected; that under the said act your orator as a *bona fide* holder of such treasury certificates of indebtedness was, and is, a party to a contract on the part of the State with him as such holder that such treasury certificates of indebtedness shall be receivable for taxes and dues to the State, except special taxes levied to pay interest on the public debt, and that an annual tax of three mills on the dollar of all taxable property of the State shall be levied and collected in the same manner as may be prescribed by law for the levy and collection of the regular annual taxes of the State, and that the State treasurer shall retire at the end of each year from their date one-fourth of the amount of the treasury scrip authorized to be issued as directed by the said act.

Eighth. And your orator, further complaining, charges that the State of South Carolina, by and through the action of its Legislature, in thus repealing the provisions of the act of the 2d March, 1872, by which rights were created and remedies for the enforcement

thereof secured to *bona fide* holders of such treasury certificates of indebtedness or revenue bond scrip, after rights of your orator had become fixed under the said act as a contract to which your orator and the said State became and were and are parties, has violated the 10th section of the 1st article of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of a contract; that this provision of the Constitution has been declared by the Supreme Court of the United States to apply as well to the contract to which the State is a party as to any other contract; and that the repeal by the Legislature of the said State of the provisions of said act of March 2d, 1872, which
12 gave certain rights and secured certain remedies to your orator, and the refusal of the comptroller general, hereinafter set forth, to direct a levy of a tax for the purpose of retiring such certificates of indebtedness, and the refusal of the State treasurer to perform the duties imposed on him by the provisions of the act of 2d March, 1872, hereinafter set forth, and the refusal of the county treasurers to receive the said treasury certificates of indebtedness in payment of taxes and dues to the State, except special taxes levied to pay interest on the public debt, hereinafter referred to, are each and every of them acts done by the officers of said State in the violation of the obligation of the contract of the State with your orator, and which contract obliges the said State treasurer, the said comptroller general, and the said county treasurers to do the several acts and things by the said act of the Legislature of March 2d, 1872, provided to be done by them in discharge of the obligations undertaken by the State, and which the State could not impair by repealing the act which creates the contract, or by requiring those officers not to do those things which it had promised and contracted with your orator that they would severally do and perform.

Ninth. And your orator further shows that the Blue Ridge Railway Company, since the passage of said act of March 2d, 1872, and since your orator became in possession of the said certificates of indebtedness, has been adjudicated a bankrupt. That J. P. Southern and J. P. Low are the duly appointed assignees of the bankrupt court. That the said assignees, as he is advised, claim to have a certain interest in the subject-matter of these proceedings, and they are the proper parties to be before the court and to be heard in relation to such order or decree as may be herein made.

Tenth. And your orator, further complaining, shows unto your honors that after an adjudication by the Supreme Court of the United States in a certain suit pending therein on appeal, wherein your orator was complainant and appellant and the said Johnson Hagood, comptroller general, and others were defendants, in which your orator's suit and appeal was dismissed for want of equity, but without prejudice to your orator's right to bring and prosecute
13 another suit when he shall be in a condition to exhibit any equity in himself, to wit, in the month of April, 1879, your orator in person called upon the said S. L. Leaphart, State treasurer, as aforesaid, and tendered to him the aforesaid certificates of indebtedness owned by your orator, to wit, about the sum of $166,000, and

after laying the certificates out in the presence of said State treasurer, at his office in Columbia, in the State of South Carolina, and in the view of said State treasurer, did thereupon demand payment of the said revenue bond scrip, or otherwise certificates of indebtedness, under and pursuant to the provisions of the said act of March 2d, 1872, and thereupon the said State treasurer did decline and refuse to accept said tender of said certificates, and refused to pay the same or any part thereof to your orators.

And your orator further shows that on or about the said date last mentioned your orator, at Columbia aforesaid, called upon the said Johnson Hagood, comptroller general of the State of South Carolina, and did inform the said comptroller general of your orator's aforesaid tender and demand of the said State treasurer, and the refusal of the said State treasurer as aforesaid, and did then and there, in writing, request the said comptroller general from time to time to prepare and transmit to the several county auditors all such forms and instructions as he might deem necessary for collection, in the same manner and at the same time as had been provided by law for the levy and collection of the regular annual taxes of the State for the current fiscal year, the taxes provided to be levied by the 4th section of the aforesaid act of the General Assembly for the redemption of said scrip, which class of duties your orator avers were duties imposed upon the said comptroller general by the said act of March 2d, 1872. That the said comptroller general has neglected and refused to comply with your orator's most reasonable request in that behalf, and with each and every part thereof.

Eleventh. And your orator, further complaining, shows that he is by profession, in the city of New York, a banker and broker. That at the time he acquired title to the aforesaid Blue Ridge railroad bonds, guaranteed by the State of South Carolina, and subsequently of the said certificates of indebtedness, he was such banker and broker, and dealt in said classes of securities. That ever since said period he has been such banker and broker, and dealing in such securities.

14 That your orator at the time he took said revenue bond scrip, otherwise called certificates of indebtedness, was able in open market to dispose of the same to parties desiring to use the same in payment of taxes levied by the State of South Carolina, except in payment of special tax levied to pay interest on the public debt of South Carolina.

That for such purpose each of the said scrip or certificates of indebtedness commanded a price of seventy per cent. of its face value, and your orator lately disposed of a quantity of said scrip at that rate, on a conditional sale, that the said scrip could be so used in tender of said taxes; but your orator further shows that the different county treasurers of the different counties of the State of South Carolina, among others the county treasurer of Charleston county, the county treasurer of Oconee county, the county treasurer of Anderson county, and the county treasurer of Richland county, have refused, and do continually refuse, to receive the said treasury certificates of indebtedness, otherwise revenue bond scrip, in payment of taxes and

dues to the State, except special taxes levied to pay interest on the public debt, whereby the said securities have ceased to have any market value, and the property of your orator has thereby become very much diminished in value by reason of the said refusal of the said county treasurers, and of the said State treasurer, and of the said comptroller general, to perform the duties enjoined upon them by said act of March 2d, 1872.

Twelfth. Your orator therefore now shows unto your honors that he is remediless except in this honorable court, where the matters and things of which he now complains are properly cognizable and relievable; that he understands and so believes, that with the treasury certificates of indebtedness used in obtaining the said bonds from your orator, as well as with the moneys received from the sale or other dispositions of other treasury certificates of indebtedness, the whole of the guaranteed bonds have been brought into the State treasury, except about six hundred thousand dollars thereof, which were in the possession of the financial agent of the State of South Carolina, in the city of New York, or held by him as collateral security on behalf of the State, at the time of the passage of the act of the 2d of March, 1872; and are to be cancelled upon de-
15 livery to the State treasurer, as provided by the first section of the said act; but that, with the exception of such $600,000, all of the four millions of dollars of bonds guaranteed by the State have been surrendered to the State of South Carolina, and that the obligation of the State under its contract, pursuant to the terms of the said act of the 2d of March, 1872, is complete, and the purpose of the said State in protecting itself from liability for the whole amount of its guaranty has been completely accomplished.

And your orator further shows that by reason of the repeal by the Legislature of the said State of the several provisions of the said act hereinbefore stated, and of the refusals of the State treasurer to accept the tender and to pay off or redeem such treasury certificates of indebtedness or revenue bond scrip as aforesaid, and of the refusals by the comptroller general to perform the duties enjoined upon him by the said act to levy the said tax specified in the said act for the retiring of the said treasury certificates of indebtedness, and also of the refusals of the county treasurers to receive the said treasury certificates of indebtedness for taxes and dues to the State, except taxes levied to pay interest on the public debt, the contract between the State of South Carolina and your orator has been broken, and the obligation thereof impaired by such laws of the State; and the comptroller general and the State treasurer and the county treasurers, whose duty it was and is under the said act to do and perform the several acts required of them under the said act, allege that they are protected because of such repeals in refusing to do and perform their plain duty in the premises.

And your orator further shows unto your honors that not only has the State of South Carolina by the issue, exchange, or otherwise of these treasury certificates of indebtedness, or by the moneys obtained from the sale of them, become possessed of the bonds of the Blue Ridge Railroad Company on which the guaranty of the

State was endorsed, and thus completely destroyed the guaranty and extinguished the liability of the State because of such guaranty, but that it has moreover become possessed of the bonds of the Blue Ridge Railroad Company, on which the said guaranty was endorsed, and these, too, it has cancelled, and with the extinguishment of the guaranty has also extinguished the lien it had on the estate, property, and funds of the Blue Ridge Railroad Company.

16 And your orator further shows that he, with others in like interest with himself, holders of the said treasury certificates of indebtedness, are well entitled to the aid of this court in declaring that the repeals by the Legislature of the said State of the provisions of the said act, as hereinbefore stated, are unconstitutional, null, and void, and that, because of the contract created under the said act of the 2d March, 1872, between the State of South Carolina and the *bona fide* holders of such treasury certificates of indebtedness, the State treasurer of the State of South Carolina should be required to redeem the said certificates of indebtedness in the manner provided for in said act of March 2d, 1872; and that the said comptroller general of the said State should be required to do and perform the several acts necessary to be done and performed by him and the laws of the State of South Carolina, to levy the tax provided for in the said act, for the purpose for which it was intended; and that the county treasurers of the said State should be required to receive the said certificates of indebtedness for taxes and dues to the State, except the taxes levied to pay interest on the public debt; and that the said comptroller general should be ordered and adjudged to cease from refusing to levy the tax as required by the said act of March 2d, 1872, and that the said county treasurers of the said State should be enjoined to cease from refusing to receive the said treasury certificates of indebtedness for taxes and dues to the State, except the taxes levied to pay interest on the public debt.

And your orator further shows that in order for your orator to get any relief from the unjust and improper legislation of the State of South Carolina in repealing the act of March 2d, 1872, it will become necessary for him to bring a multiplicity of suits and legal proceedings by way of mandamus against the said State treasurer, the said comptroller general, and the several county treasurers of the several counties of South Carolina, because that the said several State officers have heretofore set up and pretended, and do now pretend, that the provisions of the said act of March 2d, 1872, were and are wholly unconstitutional and void, and they set up and seek to protect themselves from your orator's litigation in that behalf by asserting and pretending that one or more of the State judicial tribunals of the State of South Carolina have decided that the

17 said act of March 2d, 1872, was unconstitutional and invalid because of a violation of certain provisions of the Constitution of the United States, matters which can only be properly decided by the Federal courts.

To the end, therefore, that the act of the Legislature of the State of South Carolina of the 2d March, 1872, may be decreed a contract binding the State of South Carolina, and affecting the said State with

an obligation to do and perform, or cause to be done and performed, the several matters and things therein stipulated and set forth to be done and performed by the said State, through its officers and agents, particularly so much of the said act as provides for the levy of a tax to retire the said certificates of indebtedness, and to receive the same in payment of taxes and other dues to the State, except the tax levied to pay interest on the public debt; that the several parties holding, or claiming to hold, the said treasury certificates of indebtedness, *bona fide* and for value, may be called in and admitted to prove the same before a proper person to be appointed for that purpose; that the whole amount of such treasury certificates of indebtedness may be ascertained; that the repeal of the provisions of the said act of the 2d of March, 1872, by the Legislature may be declared unconstitutional, null, and void, because such repeal impairs the obligation of the contract between the State of South Carolina and your orator, and all other parties who are *bona fide* holders of such treasury certificates of indebtedness; that for the purpose of defending itself in such manner as it may be advised to be proper, the State may be allowed, upon the application of its attorney general in its behalf, to be made a party to these proceedings; that, upon the ascertainment of the amount of treasury certificates of indebtedness, proper process may be decreed against the State treasurer to perform the duties enjoined upon him by the 4th section of the act of March 2d, 1872, that is to say, to redeem the aforesaid treasury certificates of indebtedness, otherwise called revenue bond scrip, tendered by your orator to the said State treasurer, may be required to receive the same in payment of all dues to the State except interest on the public debt, and that proper process may be issued against the comptroller general, requiring him to perform the duties enjoined upon him under and pursuant to the different sections of said act of March 2d, 1872, and for that purpose that he from time to time be decreed to prepare and transmit to the several county auditors all such forms and instructions as may be proper and lawful for levying
18 and collecting, or either, in the same manner and at the same time, as has been provided by law for the levy and collection of the regular annual taxes of the State for the current fiscal year, the taxes levied by the 4th section of the aforesaid act of the General Assembly for the redemption of said scrip; that the county treasurers of the said State be required to receive such treasury certificates of indebtedness as may be established as a claim under the contract created by the said act in tender of taxes and dues to the State, except interest on the public debt; that in cases where such tender is made, the county treasurer refusing to receive the same shall be prevented by injunction from selling property or otherwise enforcing the payment of the said tax; that a mandatory injunction may be issued out of this honorable court, requiring the comptroller general to cease from refusing to levy the tax for retiring the said treasury certificates of indebtedness, and the county treasurers to cease from refusing to receive the same for taxes and dues to the State, except to pay the interest on the public debt, and for such other and further relief as to your honors shall seem meet, may it

please your honors to grant unto your orator not only your writ of injunction as prayed for, but also your writ of subpœna directed to the said Johnson Hagood, comptroller general, and to the said S. L. Leaphart, State treasurer, and to the said P. C. Gaillard, county treasurer of Charleston county, in said State, and to the said H. F. Alexander, county treasurer of Oconee county, in said State, and to the said William McGukin, county treasurer of Anderson county, in said State, and to the said W. H. Gibbes, county treasurer of Richland county, in said State, and to J. P. Southern and J. P. Low, assignees in bankruptcy of the Blue Ridge Railroad Company, requiring them, and each of them, at a certain day and under a certain pain therein to be limited, personally to be and appear in this honorable court, and then and there full, true, and direct and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree as to your honors shall seem meet; and your orator will ever pray.

TH. S. CAVENDER,
Solicitor for Amos D. Williams.
J. H. RION,
DENNIS McMAHON,
Of Counsel.

19 SOUTHERN DISTRICT OF NEW YORK, *ss.:*

On the 16th day of September, 1879, before me personally came Amos D. Williams, who, being by me duly sworn, did depose and say that he had read the foregoing complaint, and knew the contents thereof, and that the same is true of his own knowledge, except as to those matters stated on information and belief, and that as to those matters he believes the same to be true.

AMOS D. WILLIAMS.

Subscribed and sworn to before me, this 16th day of September, A. D. 1879.

[L. S.]

JOHN A. OSBORN,
U. S. Comm'r Southern District New York.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss.:*

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed *jurat*, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this 16th day of September, in the year of our Lord one thousand eight hundred and seventy-

nine, and of the Independence of these United States the one hundred and fourth.

[L. S.] JOHN I. DAVENPORT, *Clerk.*

Filed October 23, 1879.

20 *Subpœna ad Respondendum.*

UNITED STATES OF AMERICA,
Fourth Circuit, State of South Carolina:

The President of the United States to Johnson Hagood, comptroller general of the State of South Carolina; S. L. Leaphart, treasurer of said State; P. C. Gaillard, county treasurer of Charleston county in said State; W. H. Gibbs, county treasurer of Richland county in said State; H. F. Alexander, county treasurer of Oconee county in said State; William McGukin, county treasurer of Anderson county in said State; John P. Southern and James P. Low, assignees in bankruptcy of Blue Ridge Railroad Company:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the dis-
21 trict of South Carolina, at Charleston, on the first Monday of December, 1879, twenty days after the service thereof, then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Amos D. Williams.

And also that you do on the rules' day next immediately after the day appointed and expressed file, or cause to be filed, in the registry of said court, your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the twenty-third day of October, in the year of our Lord one thousand eight hundred and seventy-nine, and in the 104th year of the sovereignty and independence of the United States of America.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

THOS. S. CAVENDER,
Complainants' Solicitor.

22 *Memorandum.*

The defendants above named are hereby notified and required to enter their appearance in the above cause in the office of the clerk of the circuit court of the United States for the district of South Carolina, at Charleston, on or before the first Monday of December, 1879, or the bill will be taken *pro confesso* against them.

THO. S. CAVENDER,
Complainants' Solicitor.

Entered in my office, "civil docket," folio 175.

R. M. WALLACE,
Oct. 23, '79. *U. S. Marshal.*

Marshal's Return of Service.

U. S. MARSHAL'S OFFICE,
CHARLESTON, S. C., *Nov.* 15, 1879.

I hereby certify that I have, by my deputies, as specified below, served copies on the within-named defendants, on the 23rd Oct., '79, at Charleston, S. C., on County Treasurer P. C. Gaillard, by
23 Deputy A. F. Farrar; and at Columbia, S. C., on the 28th October, '79, by Deputy Charles Barnum, on Johnson Hagood, comptroller gen'l, on S. L. Leaphart, treas., on W. H. Gibbs, county treas., and on John P. Southern, assignee; and Anderson C. H., So. Ca., by Deputy J. H. McConnell, on 12th Nov., 1879, on William McGukin, county treasurer of Anderson county; and at Walhalla, S. C., on 13th Nov., 1879, by Deputy J. H. Robbins, on County Treasurer H. F. Alexander, of Oconee county.

R. M. WALLACE,
U. S. Marshal.

James P. Low, assignee, has left the State and cannot be found.
R. M. WALLACE, *U. S. M.*

And on the 19th day of December, A. D. 1879, came into court H. F. Alexander, one of the defendants, by his solicitor, S. P. Dendy, and filed the following notice of appearance, which notice of appearance is in the words and tenor following:

24 *Notice of Appearance.*

UNITED STATES OF AMERICA,
Fourth Circuit, State of South Carolina:

AMOS D. WILLIAMS *vs.* JOHNSON HAGOOD, Comp. Gen'l of the State of South Carolina, *et al.*	Bill for Relief.	In Equity.

To Thomas S. Cavender, solicitor for complainant in the above-stated action, Charleston, S. C.

SIR: You will please take notice that the undersigned has been retained by and appears for H. F. Alexander, county treasurer for Oconee county, S. C., one of the defendants in the above-stated action, and hereby demands a copy of the bill of complaint in said action, which may be served at his office, on the public square
25 in Walhalla, S. C., this 19th day of Nov., 1879.

S. P. DENDY,
Defendants' Att'y.

STATE OF SOUTH CAROLINA, *County of Oconee:*

S. P. Dendy, attorney for H. F. Alexander, county treasurer of Oconee county, S. C., being duly sworn, says: That on the 19th day

of November, 1879, he deposited in the post office at Walhalla, S. C., a copy of the within notice and demand of copy of bill of complaint, duly addressed to Thomas S. Cavender, complainants' solicitor, at Charleston, S. C., with the postage thereon prepaid.

S. P. DENDY.

Sworn to & subscribed before me, this 17th Dec., 1879.

ROBT A. THOMPSON,
U. S. Com'r.

And on the 29th day of April, A. D. 1880, came into court the defendants, by their solicitor LeRoy F. Youmans, attorney general of South Carolina, and filed the following answer; which answer is in the words and tenor following:

26

Answer.

THE UNITED STATES OF AMERICA,
Fourth District of South Carolina:

In the Circuit Court. In Equity.

AMOS D. WILLIAMS, Complainant,
against
JOHNSON HAGOOD, Comptroller General of South Carolina; S. L. LEAPHART, Treasurer of South Carolina; P. C. GAILLARD, County Treasurer of Charleston county; W. H. GIBBES, County Treasurer of Richland county; H. F. ALEXANDER, County Treasurer of Oconee County; WM. MCGUKIN, County Treasurer of Anderson County; JNO. P. SOUTHERN and JAMES P. LOW, Assignees in bankruptcy of The Blue Ridge Railroad Company.

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

The joint and several answer of Johnson Hagood, comptroller general of South Carolina; S. L. Leaphart, treasurer of South Carolina; P. C. Gaillard, county treasurer of Charleston county; W. H. Gibbes, county treasurer of Richland county; H. F. Alexander, county treasurer of Oconee county; Wm. McGukin, county treasurer of Anderson county:

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the manifold errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or to so much and such parts thereof as they are advised it is material for them to answer unto, answering, say:

That on September the fifteenth, one thousand eight hundred and sixty-eight, the General Assembly of South Carolina passed an act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina, whereby it was enacted in these words: "That whenever any contract or contracts may be made by the said company for borrowing money from any person, company, or corporation to

any amount not exceeding one million of dollars, and when
27 such contract shall be made by bonds signed by the president of the said company, under its seal, and countersigned by the secretary and treasurer thereof, it shall be the duty of the comptroller general to endorse thereon that the faith and funds of the State are pledged for the faithful performance of the said contract, as respects the punctual payment both of the principal and the interest, according to the terms of the said contract: Provided, That so much of said issue as may be necessary, not exceeding three hundred thousand dollars, shall be applied to the redemption of the present bonded debt of the said company."

That by the second section of the said act it was further enacted that the faith and funds of the State of Carolina are pledged to secure the payment of any contract which shall be made by the Blue Ridge Railroad Company in South Carolina, from any person or corporation, to an additional amount, not exceeding three millions of dollars, and when such contracts shall be made by bonds signed by the president of said company, under its seal, and countersigned by the secretary or treasurer thereof, it shall be the duty of the comptroller general of the State to endorse thereon that the faith and funds of the State of South Carolina are pledged to the faithful performance of the said contracts, as it respects the payment both of principal and interest, according to the terms of the said contracts; and that upon such endorsement being made the whole property of the said company in South Carolina, North Carolina, Georgia, and Tennessee shall stand pledged and mortgaged to the State, without any further act or deed of the company, for the faithful performance on the part of said company of such contracts in priority and preference of any other debt which the said company may thereafter create or incur.

And it was further in and by the said act enacted and declared to be an express condition that the said bonds, or any part thereof, shall not be used unless, upon application to the Congress of the United States, or to private capitalists, the amount of three millions of dollars in currency, or so much of that sum as may be necessary, shall be furnished in exchange or upon the security of said bonds.

And these defendants expressly aver that this condition has never been repealed, and that being clearly expressed upon the face
28 of the act which authorized the issue of the bonds it conveyed to every person dealing with the said bonds express notice thereof, and bound them to see that the condition was fulfilled. And these defendants also aver that the said condition never has been performed, and that any use made of the said bonds in the manner set forth by the complainant is unauthorized and illegal.

Defendants insist that the allegation of the complainant, that such repeal is contained in the act of March 6th, 1871, is wholly without legal foundation.

The last-mentioned act is entitled "An act to promote the consolidation of the Greenville and Columbia Railroad Company and the Blue Ridge Railroad Company," and all the sections of that act, among which is the clause recited in the bill of complaint repealing

the second section of the act of September fifteenth, 1868, a
and parcel of the details of the consolidation proposed by t
act, and all have relation to and are dependent upon such c
dation.

And these defendants aver that the said companies never acc
the said act, and never complied with its provisions, and that
intended consolidation has never taken place, nor have any mea
been taken to that end.

And these defendants submit that the allegation, that this re
is independent of the special purpose set forth in the title of the
would involve the General Assembly in the discredit of attempt
to violate that portion of the State constitution which requires e
act to disclose its purpose in its title, and that it shall be confin
to one subject.

The defendants therefore deny the authority in any one to off
the said bonds for sale in the New York or any other market; an
they also deny that the complainant can be deemed the *bona fi*
owner of any of them.

And these defendants, further answering, admit that there is upon
the statute book of South Carolina an act entitled "An act to relieve
the State of South Carolina of all liability for its guaranty of the
bonds of the Blue Ridge Railroad Company by providing for the
securing and destruction of the same;" but they insist that the said
act is not only unconstitutional and void, but that it evidently must
have been passed either by means of false pretenses, or of the sup-
pression by the principal debtor, the Blue Ridge Railroad Company,
of most important facts.

29 It is apparent, from the statements in the bill, and from
other circumstances, that the Blue Ridge Railroad Company
had never parted with the possession of the bonds, and there-
fore no debt had yet been incurred by the State.

The Blue Ridge Railroad Company held their own bonds with
the guaranty of the State on them, and were in the condition of a
party seeking a loan on security, and not aide to effect it.

No debt existed, and it was competent for the State at that stage
to cancel her endorsement. It was, therefore, a false representation
on the part of the Blue Ridge Railroad Company to affirm to the
General Assembly that the State was a debtor, and the considera-
tion alleged for the issue of the revenue bond scrip was pretentious,
and entirely failed.

These defendants do not admit that any value was paid by the
complainant, or any holder thereof, for either the bonds of the Blue
Ridge Railroad Company or any of the revenue bond scrip issued
under the act of March, 1872. On the contrary, these defendants
have been informed, and so aver the fact to be, that whereas the
act of the General Assembly were passed with the intention of pro-
moting work on the Blue Ridge railroad, no work has been done on
said road, nor has it advanced one foot, since the passage of the said
acts.

The defendants, further answering, say that the said act of March
2, 1872, is unconstitutional in being repugnant to the Constitution of

the United States, and also to that of South Carolina; but they also say that in a case duly made between the State of South Carolina, at the relation of E. F. Gary, against the several county treasurers of the said State, and in which issue was joined in the circuit court of South Carolia, for the county of Richland, it was adjudged that the said act was unconstitutional and void, and the county treasurers, and all other officers of the State, were enjoined from collecting the tax levied by the said act, and the State treasurer was enjoined from issuing any of the said scrip, and that upon an appeal, duly taken to the supreme court of the State of South Carolina, the decree of the circuit court was affirmed, and judgment now stands in full force and virtue.

And these defendants aver that they have no interest, power, and authority in the premises; that by the supreme authority of this State they have been enjoined from taking any action as
30 prayed for by the complainant, and that they cannot but submit to that authority; that in fact the State of South Carolina is a necessary principal and real party to this suit, without whose presence no action can be taken by this court, and they pray that they may have the same benefit hereof as if they had formally filed their demurrer.

These defendants, further answering, say that by the repeal of the several acts referred to in the bill, and by the abolition of the office of State auditor, there is no person authorized to levy or collect the tax claimed in the bill, and the several treasurers are expressly forbidden, as well by the Legislature as by the mandate of the supreme court of the State, from levying or collecting such tax, or from receiving or paying out any of the said revenue bond scrip, and that this court has no jurisdiction to enforce said payment, receipt, or collection; that the proper remedy is by petition to the General Assembly of the State, and that any jurisdiction over such matters is denied to the courts by the Constitution of the United States.

These defendants are merely officers of the State, and must respectfully defer to its control, and insist that they are in no default of which this honorable court can take notice. They therefore insist that no relief can be granted to the complainant in this suit, and ask to have the benefit of this objection to the relief prayed for in the bill of complaint.

And these defendants, denying all manner of unlawful combination and confederacy, without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct. And humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

LEROY F. YOUMANS,
Att'y Gen'l, for Defendants.

31 STATE OF SOUTH CAROLINA, *Richland County:*

Johnson Hagood, being duly sworn, says: That the matters and things stated in the foregoing answer are true of his own knowledge, except such as stated on information and belief, and as to such matters he believes them to be true.

JOHNSON HAGOOD,
Comp. General.

Sworn and subscribed to before me, this 20th day of April, A. D. 1880.

WINTHROP WILLIAMS,
Notary Public.

And on the 2d day of July, A. D. 1880, came into court the complainant, by his solicitors, Thomas S. Cavender, Dennis McMahon, and J. H. Rion, and filed the following replication; which replication is in the words and tenor following:

Replication.

32 THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In the Circuit Court. In Equity.

AMOS D. WILLIAMS, Complainant,
against

JOHNSON HAGOOD, Comptroller General of the State of South Carolina; S. L. LEAPHART, Treasurer of the said State; P. C. GAILLARD, County Treasurer of Charleston County; W. H. GIBBES, County Treasurer of Richland County; H. F. ALEXANDER, County Treasurer of Oconee County; WILLIAM McGUKIN, County Treasurer of Anderson County; JOHN P. SOUTHERN and JAMES P. LOW, Assignees in Bankruptcy of the Blue Ridge Railroad Company, Defendants.

Replication to answer of defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication thereunto, saith: That he will aver and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and

humbly prays, as in and by this bill of complaint he hath already prayed.

TH. S. CAVENDER,
Solicitor for Complainant.
DENNIS McMAHON,
J. H. RION, *of Counsel.*

Filed July 2d, 1880.

33 And on the 4th day of August, A. D. 1880, came into court the complainant, by his solicitor, Thomas S. Cavender, and obtained the following order of reference, which order is in the words and tenor following:

Order.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In the Circuit Court. In Equity.

AMOS D. WILLIAMS, Complainant,
against
JOHNSON HAGOOD, Comptroller General of the State of South Carolina; S. L. LEAPHART, Treasurer of the said State; P. C. GAILLARD, County Treasurer of Charleston County; W. H. GIBBES, County Treasurer of Richland County; H. F. ALEXANDER, County Treasurer of Oconee County; WILLIAM McGUKIN, County Treasurer of Anderson County; JOHN P. SOUTHERN and JAMES P. LOW, Assignees in Bankruptcy of the Blue Ridge Railroad Company, Defendants.

Decree of Reference.

The pleadings in the above-entitled cause having been brought to an issue, and the said pleadings having been filed, on motion of Mr. T. S. Cavender, solicitor for the complainant, and by consent of Mr. Attorney General Youmans, for the defendants:

It is ordered that it be referred to J. E. Hagood, Esq., the clerk of this court, as special master, to take testimony and proof upon the issues raised.

It is further ordered that all the testimony and proof heretofore taken in the cause, entitled Amos D. Williams, a citizen of the State of New York, *vs.* Solomon L. Hoge, comptroller general, a citizen of the State of South Carolina, and others, be considered as
34 in evidence in the above-entitled cause, the same as if taken herein, with leave to either party to re-examine any witness heretofore examined therein.

It is further ordered that the said special master do file his report of the testimony and proof taken on or before the third Monday in October next.

This the 4th day of August, A. D. 1880.

HUGH L. BOND.

I consent, not admitting, but protesting against all the allegations made in and rights claimed by the bill of complaint.

LEROY F. YOUMANS,
Att'y Gen., for Defendants.

July 31, 1880.

35 *Testimony.*

United States Circuit Court, District of South Carolina.

AMOS D. WILLIAMS *vs.* JOHNSON HAGOOD, Comptroller General of the State of South Carolina; S. L. LEAPHART, Treasurer of said State; P. C. GAILLARD, County Treasurer of Charleston County; W. H. GIBBES, County Treasurer of Richland County; H. F. ALEXANDER, County Treasurer of Oconee County; WM. McGUKIN, County Treasurer of Anderson County; JOHN P. SOUTHERN and JAMES P. LOW, Assignees in Bankruptcy of the Blue Ridge Railroad Company.	Bill of Complaint.

In the Circuit Court. In Equity.

JOHN P. SOUTHERN *et al.*, Assignees, etc., Complainants, *vs.* JOHNSON HAGOOD, Comptroller General, *et al.*, Defendants.	Bill of Complaint.

Testimony taken, to be used in either of the above, stated cases, together with testimony heretofore taken by John P. Thomas, Jr., acting as special master, by consent of counsel, in the necessary absence of James E. Hagood, Esq.

36

Reference held in Columbia, S. C., 15th day of October, 1880.

Present: Mr. Attorney General LeRoy F. Youmans, solicitor for the defendants, and Thos. S. Cavender and James H. Rion, solicitors for the plaintiffs.

A. D. WILLIAMS sworn.

Examined by Col. RION:

Witness was a stock broker, residing in New York in 1872, in Wall St. Was and is now a member of the stock board—rather, stock exchange. All the above is true as to preceding and subsequent year. Dealt in State securities, and in some of them quite largely. In the early part of 1872 purchased in New York market $417,000 in bonds of the Blue Ridge railroad, guaranteed by the State of South Carolina. In April, I think, 1872, I delivered these bonds to the treasurer of State of South Carolina, the president of the Blue Ridge, Mr. Patterson, Jno. J., being present, and received therefor $166,000 of South Carolina revenue bond scrip. I

own all of that scrip now. He exhibits one of this class of scrip now, (which is here attached, and endorsed "John P. Thomas, Jr."):

$100.00. No. 91. $100.00.

Revenue Bond Scrip.

THE STATE OF [Palmetto Tree] SOUTH CAROLINA.

COLUMBIA, S. C., *March* —, 1872.

Receivable as one hundred dollars in payment of all taxes and dues to the State, except special tax levied to pay interest on public debt.

NILES G. PARKER,
State Treasurer.

One hundred dollars. One hundred dollars.

[On each side of scrip:] One hundred dollars, act March, 1872.

Endorsed: Jno. P. Thomas, Jr., acting special master.

All the scrip bought at that time is of the same class as this, exactly like it, except the denomination, and this is the scrip
37 which witness now owns. Witness sold at auction, through Beard Bros. & Senn, auctioneers, at Columbia, 22d April, 1879, $20,000 of this scrip, and it brought $200, out of which was paid, for commissions and advertising, $15.

On 25th of April, 1879, he made a conditional sale to W. R. Cathcart of $8,000 of same scrip. A copy of bill of sale is here attached, marked "E."

On 23d of April, 1879—I think 23d—I went to State treasurer's office in Columbia, S. C., and demanded payment of $166,000 South Carolina revenue bond scrip, which is the scrip upon which action was brought, and was received in exchange for Blue Ridge railroad bonds, as before stated. I made the demand as stated in "A."

In response, he refused to pay for this scrip, or to have anything to do with it, giving as his reason that no money had been collected and no appropriation had been made for its payment. On same day he made a verbal demand of the comptroller general, and on the next day made a written demand, specified in "B," and endorsed by the comptroller general. Comptroller general answered that he would refer the matter to the law officer of the State, and witness never heard anything more from him on the subject.

No assessment nor levy has been made by comptroller general in pursuance of the demand.

The value of witness's scrip in New York is nothing: it has no value.

X examined by attorney general:

The scrip is in witness's possession in New York city. Part in witness's own possession in city of New York, and part in vaults of brother-in-law.

There have been three different issues of scrip; mine belongs to the first issue. I have seen some of all classes. The second issue is known as the American bank note scrip, and the third issue as the Washington scrip.

MEM. The attorney general called for the production of the scrip.

X X examined by Col. RION:

The scrip which witness has is the original scrip, and never has been exchanged for any other. The scrip sold by Mr. Beard for witness was not a part of the $166,000, but of the same class of scrip.

38 SAM'L BEARD sworn.

Examined by Col. RION:

Witness in 1879 and present year a resident of Columbia; occupation, auctioneer and commission merchant. Mr. Beard testified to the same effect as did Mr. Williams in regard to the sale, except that it was sold *to* Mr. Williams. The sale was at public auction, after it was advertised in one of the Columbia papers; have no recollection of selling any scrip except the above in that year. On 5th January, 1880, witness sold at Columbia at public auction, after advertisement in Columbia Register, $18,000 of the revenue bond scrip for $95, which belonged to the Citizens' Savings Bank, bankrupt, and purported to be sold in pursuance of order of U. S. district court in bankruptcy. Ordinary attendance at that sale of moneyed men and brokers, the attendance being a little fuller than usual. The purchase was by T. S. Cavender, who was a purchaser of other securities.

No question by attorney general.

JOHN P. SOUTHERN sworn.

Examined by Col. RION:

Was present at the sale of $20,000 scrip of Mr. Williams, and the same was bought by Mr. J. M. McKay.

A. D. WILLIAMS recalled by Col. RION:

He did not purchase the $20,000 of scrip sold by Mr. Beard. It was purchased by Mr. McKay; his initials he did not recollect.

W. R. CATHCART sworn:

The witness is shown the agreement of sale of scrip between himself and Mr. Williams, and marked "E." which he recognises. This contract has never been carried out. Witness endeavored to use the scrip for payment of taxes, but was unable to do so, and therefore the contract was not carried out. Witness made a tender of some of this scrip for payment of taxes to treasurer of county of Richland, and received a certificate from treasurer; all set forth in "C." The scrip attached is the one tendered. This scrip is the one I received from Mr. Williams. Witness was present when Mr. Williams made the demand upon the State treasurer. He corroborates what

Mr. Williams says in regard to demand upon State treasurer; corroborates also what Mr. Williams says as to demand upon the comptroller general, being present at the time. Witness was present when the demand was made upon State treasurer by Mr. Southern, which is the same exact words as the demand made by Mr. Williams, except that the amount was stated to be $994,870. Was present when Mr. Southern made demand upon State comptroller general, Johnson Hagood; demand made was in exactly same words as that made by Mr. Williams, except that the amount is stated to be $994,870, and the written demand was signed J. P. Southern, assignee, &c.

No question by attorney general.

THOS. J. GIBSON sworn.

Examined by Col. RION:

This witness corroborates what has been said in testimony in regard to demands made upon the State treasurer by Messrs. Williams and Southern as assignee. Witness is a broker doing business in the city of Columbia. He is shown the scrip which has been put in evidence here; knows of no sale lately, but present value is about one and a half per cent.

X examined by Attoney General YOUMANS:

Somebody offered him one and a half per cent., and witness asked time to confer with that man. Witness says that he himself is the man who offered one and a half per cent.; witness also said that Mr. T. S. Cavender offered one and a half per cent., to the best of his recollection.

JOHN P. SOUTHERN recalled.

Examined by Col. RION:

Is one of the assignees in bankruptcy of the Blue Ridge Railroad Company. He says that he holds some of the scrip—revenue bond scrip—as assignee of the Blue Ridge Railroad Co., which is subject to a pledge as collateral to creditors of the road, to the amount of $994,870. Witness made a tender of some of this scrip to Mr. Neagle, then county treasurer of Richland county, in payment of taxes; made the tender for Dr. Wheeler, as set forth in "D;" did not himself make a tender of them for taxes of Blue Ridge railroad; witness made a demand upon State treasurer; corroborates the testimony of Mr. Cathcart; made a demand upon comptroller general, corroborating the testimony of Mr. Cathcart; held the position in Blue Ridge R. R. Co., except as assignee; witness had in his possession the stock book of this company.

(The plaintiffs will put in evidence the stock books of the Blue Ridge Railroad Co.)

X-examined by Attorney General YOUMANS:

Scrip is pledged to Mr. E. B. Wesley; was pledged in 1872, before witness' connection with the bankrupt estate.

The attorney general calls for the production of the scrip.

XX examined by Col. RION:

This stock is not pledged to anybody but Mr. Wesley, as far as witness knows.

The plaintiffs now introduce the two transcripts of the Supreme Court of the United States of the two original causes, and also the statutes of the State of South Carolina, relating to the Blue Ridge Railroad Co., its bonds, and the scrip in question, and in any manner affecting the case.

The above testimony was taken by me at a reference held in Columbia, S. C., on the 15th day of October, 1880.

JNO. P. THOMAS, JR.,
Special Master.

(A.)

(Copy.)

MR. TREASURER: My purpose in calling on you this morning is to tender and demand payment of $166,000 of revenue bond scrip.

The scrip is in these packages. I would be glad if you would examine it and count it.

MR. TREASURER, I now tender you this revenue bond scrip, amounting to $166,000, and demand payment of it under the provisions of the act of the General Assembly of March 2, 1872, entitled "An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company, by providing for the securing and destruction of the same."

41 (B.)

(Copy.)

COLUMBIA, S. C., *April* 23, 1879.

Hon. JOHNSON HAGOOD, *Comptroller General.*

SIR: I called on Hon. S. L. Leaphart, State treasurer, yesterday, and tendered him revenue bond scrip, amounting to $166,000, and demanded payment of the same under the provisions of the act of the General Assembly of March 2, 1872, entitled "An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company, by providing for the securing and destruction of the same." He refused to pay the scrip, or to have anything to do with it, alleging that no money had been collected, and no appropriation had been made, for its payment.

Referring to the conversation I subsequently had with you, and deferring to your suggestion as to putting my views in wrtiing, I hereby demand that you do, from time to time, prepare and transmit to the several county auditors all such forms and instructions as you may deem necessary for collecting, in the same manner and at the same time as have been provided by law for the levy and collection of the regular annual taxes of the State for the current fiscal year,

the taxes levied by the fourth section of the aforesaid act of the General Assembly for the redemption of the said scrip.

Very respectfully,

(Signed) A. D. WILLIAMS.

(Endorsement:) (Copy.) Comptroller general's office, 24th April, 1879. I hereby acknowledge service of the original paper of which this is a copy. (Signed) Johnson Hagood, C. G.

(C.)

COLUMBIA, S. C., *May* 20, 1879.

I, this day, at the office of the treasurer of the county of Richland, made a formal tender of revenue bond scrip, an ob-
42 ligation on the part of the State, receivable in payment of all taxes and dues to the State, except special tax levied to pay interest on public debt, in part settlement of State taxes, with cash to cover the balance. While awaiting to be served by the treasurer in his office, he turned to me, anticipating my purpose, and said:

"Mr. Cathcart, if it is your wish to make a formal tender for your taxes, in paper other than currency, I would prefer to delay the matter for a day or two for instructions, as I am under positive instructions not to receive any tender except currency."

I replied that I must settle my taxes to-day. I prefer to do so now. I therefore make this tender, part in currency, the balance in scrip—will you receive it? Here I read the face of the scrip.

Mr. Gibbes then said:

I am acting under general instructions, and can receive nothing but currency, silver or gold. But I will give you my certificate for the amount of such scrip, showing that you have tendered me so much for a part of your State taxes.

I accept the certificate, which is attached hereto.

All of the foregoing transpired in the presence of Mr. Geo. Symmers and Mr. J. S. Robbins.

(Signed) W. R. CATHCART.

Witness:

(Signed) J. S. ROBBINS.

(*Certificate Attached to Original.*)

(Copy.)

COLUMBIA, S. C., *May* 20, 1879.

W. R. Cathcart has this day tendered revenue bond scrip, No. 90, face value $100.00, signed by Niles G. Parker, State treasurer, dated March, 1872, for a part of his State tax amounting to $195, which, under the acts, I do not recognize as lawful tender for taxes.

(Signed) W. H. GIBBS,
County Treasurer.

43

(Copy.)

(Scrip No. 90 attached.)

$100.00. No. 90. $100.00.

Revenue Bond Scrip.

THE STATE OF [Palmetto Tree] SOUTH CAROLINA.

COLUMBIA, S. C., *March* —, 1872.

Receivable as one hundred dollars in payment of all taxes and dues to the State, except special tax levied to pay interest on public debt.

NILES G. PARKER,
State Treasurer.

One hundred dollars. One hundred dollars.

[On each side of scrip:] One hundred dollars, act March, 1872.

Endorsed: Jno. P. Thomas, Jr., special master.

(D.)

(Copy.)

OFFICE OF COUNTY TREASURER, RICHLAND COUNTY,
COLUMBIA, S. C., *May* 16, 1874.

The revenue bond scrip hereunto attached, being $1,500, was presented and tendered to me in payment of the tax (with penalty) upon the real estate in the city of Columbia, known as the Wheeler House, by Dr. E. W. Wheeler, the owner thereof.

As treasurer of Richland county, I refuse to receive said scrip in payment of said tax, believing that I am not authorized by law to receive the same.

(Signed) J. L. NAGLE,
County Treasurer Richland Co.

(E.)

(Copy.)

Memorandum of agreement made this 25th day of April, 1879, between A. D. Williams, of the city of New York, and W. R. Cathcart, of the city of Columbia, as follows:

The said Williams agrees to sell to the said Cathcart, and
44 the said Cathcart agrees to buy from the said Williams, eight thousand dollars of revenue bond scrip of the State of South Carolina, issued under the act of the General Assembly of March 2, 1872, at the rate of 70 per cent. of its face value, on the following conditions, to wit: That the said scrip shall be delivered to the said Cathcart in such amount and at such times as he may require within the next thirty days; and that, on receipt of the same, he shall use it in payment of taxes levied by the State except in payment of special tax levied to pay interest on the public debt—or in tender of such payment; and if the scrip so delivered to the said

Cathcart shall be received in payment of taxes, as aforesaid, he shall, within one day thereafter, pay the said Williams for the same at the rate aforesaid, but if the said scrip shall not be so received, he shall forthwith return the same to the said Williams, and this agreement shall thereupon be null and void.

(Signed) A. D. WILLIAMS.
W. R. CATHCART.

Witness:
J. S. ROBBINS.

Received of A. D. Williams two hundred dollars in revenue bond scrip to be used as specified above.

W. R. CATHCART.

April 25th, 1879.

(Endorsement on face of agreement:) 15 Oct., 1880. One hundred of scrip returned. (Signed) A. D. Williams.

45 *Testimony Taken by Consent of Counsel.*

Endorsed on commission, as follows:

We consent that this testimony be taken before T. M. Wilkes, Esq., of Washington, D. C., and that the testimony taken in this case be considered in evidence in case of A. D. Williams, complainant, against Johnson Hagood, comptroller general, *et al.*, defendants.

LEROY F. YOUMANS,
Attorney General, for Defendants.
TH. S. CAVENDER,
Complainants' Solicitor.

Columbia, S. C., Nov. 6, 1880.

I, the undersigned commissioner, do hereby certify that, in pursuance of the annexed commission empowering me to take evidence in a cause wherein John P. Southern and James P. Low, assignees of the Blue Ridge R. R. Co. in South Carolina, bankrupt, are complainants, and Johnson Hagood, comptroller general of the State of South Carolina, R. S. Porcher, county treasurer of Oconee county in the said State, and Samuel E. Moore, county treasurer of Anderson county in the said State, are defendants; after taking the oath annexed to the said commission, on the first day of December, 1880, at the city of Washington, District of Columbia, I proceeded to take the examination of James P. Low, a witness of lawful age, who being duly sworn, deposed and said in answer to the interrogatories accompanying the said commission, as follows, viz:

1. To the first interrogatory:

My name is James P. Low; my age fifty years; my residence, Washington, D. C.; and my occupation that of a civil engineer in the employ of the United States.

2. To the second interrogatory:

In the years 1873 and 1874 I resided in Columbia, Richland

county, South Carolina; my occupation was that of a civil engineer.

3. To the third interrogatory:

I was at one time the chief engineer of the Blue Ridge R. R. Co., of South Carolina, and held that position from the early part of the year 1869 until January, 1873; on the 16th July, 1873, I was appointed one of the Blue Ridge R. R. Co. in South Carolina,
46 in bankruptcy, by the Hon. George S. Bryan, U. S. district judge for South Carolina, which position I still hold.

4. To the fourth interrogatory:

On the 30th day of June, 1874, I went to Walhalla, and on Thursday, the 2d day of July, 1874, I tendered to Mr. Holeman, treasurer of Oconee county, revenue bond scrip in payment of taxes due the State of South Carolina from the Blue Ridge R. R. Co. of South Carolina, other than taxes levied to pay the interest on the public debt. The amount of the tender I am not able to recall. I can only say on that point that I had ten thousand ($10,000) dollars in revenue bond scrip with me in the county treasurer's office, and I tendered to him enough to pay in full all the taxes then due to the State of South Carolina from the Blue Ridge R. R. Co. of South Carolina, other than those levied to pay interest on the public debt. In like manner, on the 3d day of July, 1874, at the office of the treasurer of Anderson county, S. C., I tendered to one Brazeale, the deputy of the county treasurer, —— Dean (who was not at his office), revenue bond scrip to pay the taxes due to the State of South Carolina by the Blue Ridge R. R. Co. of South Carolina, other than taxes levied to pay the interest on the public debt. I am quite sure that the ten thousand dollars was enough to pay all the taxes due up to June, 1874, not including taxes levied to pay the interest on the public debt. On Monday, the 6th day of July, 1874, I remember to have tendered to Mr. Dean, the treasurer for the county of Anderson, South Carolina, he then being at Columbia, S. C., revenue bond scrip sufficient to pay the taxes levied by the State of South Carolina for the fiscal year 1874, other than taxes levied to pay the interest on the public debt. What I have nominated as revenue bond scrip in this testimony is sometimes called Blue Ridge scrip.

5. To the fifth interrogatory:

The only record or memoranda in my possession are brief entries in my diary, from which I am able to fix the dates.

1. To the first cross-interrogatory:

The whole of my answer to the fourth interrogatory is derived from my own knowledge.

JAMES P. LOW.

There being no further witnesses to be examined, the com-
47 missioner closed said examination, and herewith returns the same with said commission, closed under his hand and seal, the first day of December, A. D. 1880.

T. M. WILKES, [L. S.]
Commissioner.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In the Circuit Court. In Equity.

JOHN P. SOUTHERN and JAMES P. LOW, Assignees of the Blue Ridge Railroad Company in South Carolina, Bankrupt, Complainants,

against

JOHNSON HAGOOD, Comptroller General of the State of South Carolina; R. S. PORCHER, County Treasurer of Oconee County, in the said State; and SAMUEL E. MOORE, County Treasurer of Anderson County, in the said State, Defendants.

Interrogatories to be propounded to JAMES P. LOW, of the city of Washington, D. C., a witness to be produced, sworn, and examined under the annexed commission on behalf of the complainants in the above-entitled cause.

First. What is your name, age, residence, and occupation?

Second. Where did you reside, and what was your occupation, in the years 1873 and 1874?

Third. Have you held any official position in relation to the Blue Ridge Railroad Company in South Carolina? If yea, what position, and when were you appointed, and by whom, and how long did you hold it?

48 Fourth. Did you, at any time while you held such position, or at any other time, pay, or tender to pay, any taxes assessed and imposed by the State of South Carolina on the property of the Blue Ridge Railroad Company in South Carolina, not levied to pay interest on the public debt? If yea, to whom did you make such payment, or tender of payment, and when and for what taxes, and in what amount, and in what kind of funds?

Fifth. Have you any record, memorandum, or acknowledgment of such payment or tender of payment? If yea, produce the same before the commissioner, so that a certified copy thereof may be made and appended to your testimony.

TH. S. CAVENDER,
Complainants' Solicitor.

The defendants propose the following cross-interrogatories:

If you answer yea to the fourth interrogatories, state what portion of your answer is derived from your own knowledge; and if derived from information of others, state particulars of such information, from whom derived, when and where received.

LEROY F. YOUMANS,
Attorney General.

Testimony

Heretofore taken in the cause entitled Amos D. Williams, a citizen of the State of New York, *vs.* Solomon L. Hoge, Comptroller General, a citizen of South Carolina, and others, and to be used by consent of counsel in either of the hereinbefore-entitled causes.

Testimony taken before G. D. Bryan, Special Master.

United States Circuit Court, Fourth Circuit, South Carolina District.

A. D. Williams, a Citizen of the State of New York

vs.

Solomon L. Hoge, a Citizen of the State of South Carolina.

A. D. Williams, being sworn, doth depose and say that he is a citizen of, residing and doing business in the city of New
49 York; that in the early part of the year 1872 he paid out and advanced for the State of South Carolina a large amount of money, the benefit of which advance and payment has accrued to the said State under the following circumstances: The Legislature of the State of South Carolina, by a public act, had provided for and directed a certain issue to be made of treasury scrip, to the amount of $1,800,000, intended to retire by that issue the guarantee of the said State on certain bonds which had been issued by the Blue Ridge Railroad Company. These bonds had been issued by that company with the said guarantee of the State thereon endorsed, without any question of the legal obligation of the Blue Ridge Railroad Company because of the said bonds, or of the said State because of the said guarantee endorsed thereon.

This deponent further shews that at the time hereinafter stated he held and owned four hundred & seventeen thousand dollars of said mortgage bonds, guaranteed by the State of South Carolina.

This deponent further saith that he delivered said four hundred & seventeen thousand dollars of the Blue Ridge Railroad Company bonds, with the guarantee of the State of South Carolina endorsed thereon, and that as he knows the same were cancelled by the treasurer of the State; that this deponent received in consideration for the surrender of the said bonds one hundred and sixty-five thousand dollars of the said revenue bond scrip, for which amount the State of South Carolina is justly indebted to him.

This deponent says that the said transaction took place in the city of New York, in the early part of the year 1872; that the bonds held by him and guaranteed by the State were surrendered by him to the State treasurer, or the president of the Blue Ridge Railroad Company, both of whom were in the office of this deponent at the time, and both were present when this deponent received from the president of the Blue Ridge Railroad Company the said revenue bond scrip.

(Signed) A. D. WILLIAMS.

Sworn to before me, this 11th November, A. D. 1874.

(Signed) G. D. BRYAN,
Special Master.

50 United States Circuit Court, Fourth Circuit, So. Ca. Dist. In Equity.

A. D. WILLIAMS *vs.* SOLOMOMON L. HOGE *et al.*

At the city, county, and State of New York, before me, a commissioner for the State of Georgia in said city, personally appeared Edward B. Wesley, as citizen of the State of New York, who, being duly sworn, doth depose and say that he is the *bona fide* holder and for valuable consideration of one million & five thousand dollars of revenue bond scrip, which was issued under the authority & according to the provisions of the act of the Legislature of the 2nd March, 1872, and that the said revenue bond scrip is so held for certain moneys advanced and paid by him, which moneys amount to the sum of three hundred and twenty-six thousand nine hundred and twenty-five dollars, exclusive of interest on the same, besides divers changes and expenses to which this deponent has been put concerning the same, & also exclusive of a further sum of eighteen thousand dollars, to be hereinafter mentioned; that the aforesaid sum of three hundred and twenty-six thousand nine hundred and twenty-five dollars was directly applied to redeem certain bonds of the Blue Ridge Railroad Company, which had been hypothecated for loans, as this deponent is informed, in aid of the Blue Ridge Railroad Company; which bonds so hypothecated were guaranteed by the State of South Carolina, and so redeemed by the money of this deponent, were surrendered to the State treasurer, and, so far as this deponent knows & believes, cancelled and destroyed. And this deponent further says that he came into the possession of the said scrip and paid the moneys hereinbefore referred to under these circumstances: The aforesaid bonds having been guaranteed by the State of South Carolina, and the Legislature of the said State having passed the act for the issue of the revenue bond scrip to retire the guaranty of the State on the said bonds, which were the bonds of the Blue Ridge Railroad Company, guaranteed by the State of South Carolina, this deponent was asked by John B. Palmer, who was the president of the Central National Bank, in the city of Columbia, in the State of South Carolina, and L. D. Childs, who was the president of the Carolina National Bank, at the same place, to advance a certain
51 sum of money, which would be secured by a certain amount of revenue bond scrip, and which money was to be applied to the redemption of certain bonds of the Blue Ridge Railroad Company, guaranteed by the State of South Carolina, and that these bonds so redeemed would be returned to the State treasurer to be cancelled, thus accomplishing the purpose of the Legislature in providing for the issue of the said scrip; that the said revenue bond scrip was so contemplated and provided by the act of the Legislature in the hands of John J. Patterson, who was the president of the Blue Ridge Railroad Company; that this deponent assented to the proposition, and in the latter part of the month of March, 1872, paid the sum of three hundred and twenty-six thousand nine hundred and twenty-five dollars, and received scrip to the amount of nine hundred and seventy-five thousand dollars at the par value thereof;

that the deponent made a further advance of eighteen thousa
dollars for the purpose of enabling or assisting the said Blue Rid
Railroad Company to purchase or in some way retire certain bon
guaranteed by the State of Tennessee, and received as security f
the same thirty thousand dollars more of the said *said* scrip, maki
the whole amount of the scrip in his hands one million & five tho
sand dollars; & this deponent says that the scrip so received by hi
was received from John J. Patterson, as the president of the Bl
Ridge Railroad Company; that the moneys paid by this deponer
were paid for the benefit of the Blue Ridge Railroad Company an
the State of South Carolina, the guaranty of the State in consequen
thereof being retired by the bonds on which the guaranty was en
dorsed being redeemed from hypothecation & cancelled by the Sta
treasurer.

This deponent further says that, under certain proceedings in th
courts of the State of New York, it has been decreed that from th
surplus of scrip in the hands of this deponent certain bond creditor
are entitled to the amount of one hundred and thirty-five thousan
dollars. The reasons which influenced the court in the said decree
are set forth in the certified copy thereof which accompanies this
deposition.

And this deponent further says that the sum of three hundred
& twenty-six thousand nine hundred & twenty-five dollars so paid
by him redeemed from hypothecation two million four hundred
and eighty-five thousand of the said bonds of the Blue Ridge
52 Railroad Company, and guaranteed by the State of South
Carolina; that the said sum of three hundred & twenty-
six thousand nine hundred & twenty-five dollars was paid by
him, for the purposes hereinbefore mentioned, on the 27th March,
1872, & that the sum of eighteen thousand dollars subsequently was
paid to redeem the bonds of the said company guaranteed by the
State of Tennessee.

That under the agreement made at the time when he paid the
said sums of money he is answerable to Anson Bangs, or perhaps
other bondholders in interest, according to the decree referred to in
the case of Anson Bangs *vs.* The Blue Ridge Railroad Company and
others; and also to the Blue Ridge Railroad Company for the sur-
plus which may remain after paying to himself what is due to him
under the agreement made with him at the time when he paid the
aforesaid sums of money so paid by him.

(Signed)

E. B. WESLEY.

Subscribed & sworn to before me, this 29 day of October, 1879.
Witness my hand & official seal.

[SEAL.] (Signed) J. SPENCER SMITH,
Commissioner for Georgia at N. Y. City.

Sworn to before me, this 14 day of Nov., 1874.

(Signed) JOHN A. SHIELDS,
U. S. Comm'r for N. Y.

United States Circuit Court, Fourth Circuit.

A. D. WILLIAMS *vs.* SOLOMON L. HOGUE *et al.*

At New York city, in county and State of New York, before me, a commissioner for State of Georgia in aforesaid city, personally appeared Edward B. Wesley, a citizen of the State of New York, who, being duly sworn, doth depose and say, in addition to a more full explanation of the matters and things stated in another affidavit or deposition herein this day made, that soon after he made the advance to the Blue Ridge Railroad Company of the said sum of three hundred and twenty-six thousand nine hundred and twenty-five dollars, at the request and for the purposes and under the circumstances stated in said aforementioned affidavit, he also
53 made to said Blue Ridge Railroad Company a further advance of eighteen thousand dollars, to enable said railroad company to discharge an indebtedness it was owing to the State of Tennessee; and that to secure this deponent for such advance the said Blue Ridge Railroad Company transferred and delivered to this deponent thirty thousand dollars in nominal amount of the said revenue bond scrip of the State of South Carolina, which said scrip this deponent delivered to the American Bank Note Company, with the other scrip held by deponent, as is more fully stated in the said aforementioned other affidavit of deponent; and that at the time of the making and entering of the order or decree of the court of the State of New York, a copy of which accompanies the aforementioned other deposition of deponent, the deponent was the *bona fide* holder and owner for value of the said amount of one million and five thousand dollars of the said revenue bond scrip, & entitled by & under said decree to receive that amount of such new scrip to be engraved & delivered by the said American Bank Note Company.

And further says not.

(Signed) E. B. WESLEY.

Subscribed and sworn to before me, this 29 October, 1874. Witness my hand & official seal.

(Signed) J. SPENCER SMITH,
Comm'r for Georgia for N. Y. City.

Sworn to before me, this 14 day of Nov., A. D. 1874.

[SEAL.] (Signed) JOHN A. SHIELDS,
U. S. Comm'r for N. Y.

J. Fisher, trustee of Citizens' Savings Bank, being sworn, says: That the scrip held by him as trustee is collateral security for a note of Thomas Steers, dated 29 July, 1872, in the sum of nine thousand two hundred and ninety-seven 35-100 dollars.

And further he known not.

(Signed) J. FISHER, *Trustee.*

Sworn to before me, this 19 Nov., 1874.

(Signed) G. D. BRYAN,
Special Master.

54 John B. Palmer, president of the Central National Bank of Columbia, being sworn, says that the scrip proved by him is held as collateral security for notes in his bank as follows, to wit: The scrip Nos. 51 & 52, $5,000 each, held to secure note of J. P. Southern, J. M. McKay, and J. D. Caldwell in the sum of $5,800, dated 5th September, 1872, and that the said scrip was lodged by them; the balance of the scrip proved by him held to secure notes of T. Steers for $9,297.35, $1,366.32, & $1,064, the first dated 8th Aug., 1872, the 2d July 29th, 1872, & the 3rd 8th Aug., 1872, and *and* that the said scrip was lodged by him, the said T. Steers.

And further he knows not.

JOHN B. PALMER.

Sworn to before me, this 19th Nov., 1874.

(Signed) G. D. BRYAN,
Special Master.

John B. Palmer, president Central Nat. B'k, being sworn, further says that he holds scrip No. 22, for $5,000, as collateral security for note of W. B. Gulick and others, there being now due thereon about $1,500, and that the said scrip was lodged by the said W. B. Gulick on or about the 30th day of September, 1872.

(Signed) JOHN B. PALMER,

Sworn to before me this, 19th Nov., 1874.

(Signed) G. D. BRYAN,
Special Master

W. C. Swaffield, of the firm of R. & W. C. Swaffield, being sworn, says that the scrip proved by him is held by the said firm as collateral security for a note of Thos. Steers, contractor, and said note of $2,007.35 was given for merchandize furnished by the said firm to hands employed by the said Thos. Steers, contractor on the Blue Ridge railroad, and the said scrip was lodged by the said Thos. Steers, contractor, Dec. 4th, 1872.

(Signed) W. C. SWAFFIELD.

Sworn to before me, this 19th Nov., 1874.

(Signed) G. D. BRYAN,
Special Master.

55 J. P. Southern, being sworn, says that $10,000 of the receipts proved and held by him, to wit, certificates Nos. 295 & 296, for $5,000 each, is held as collateral security for money loaned W. H. Trescott, to wit, $1,800, very soon after the scrip was issued and the said scrip was lodged by the said Wm. H. Trescott; and he further says that the balance of the scrip proved and held by him, to wit, $49,500, was purchased at different times and from different persons, commencing soon after the scrip was issued; that the prices paid varied, and that he also sold scrip at various times, and that it is perfectly impossible for him to state the exact price *of* that which

he now holds cost him, or the persons from whom the same was purchased.

(Signed) J. P. SOUTHERN.

Sworn to before me, this 19th Nov., 1874.

(Signed) G. D. BRYAN,
Special Master.

STATE OF SOUTH CAROLINA, *Richland County:*

Before me personally appeared J. P. Southern, who, being duly sworn, says that the Blue Ridge scrip held by him and exhibited to G. D. Bryan, special master, to wit, certificates No. 96, 97, 98, 99, 100, 101, 102, 103, and 202, for one thousand dollars each, was purchased at different times and from different persons, commencing soon after the scrip was issued; that the prices paid varied and that he also sold scrip at various times, and that it is perfectly impossible for him to state the exact cost of that which he now holds of the persons from whom the same was purchased.

(Signed) J. P. SOUTHERN.

Sworn to before me, this 22d day of December, 1874.

[SEAL.] (Signed) G. W. WALKER,
Not. Pub.

STATE OF SOUTH CAROLINA, *Richland County:*

Before me personally appeared J. P. Southern, who, being duly sworn, say that the Blue Ridge scrip held by him and exhibited to G. D. Bryan, special master, to wit, certificates Nos. 34 & 35, 54 for $1,000 each, was purchased with the other scrip held by him at different times & from different persons & at various prices; that it is impossible for him to state the exact amount paid for this scrip or the person or persons from whom the same was purchased.

(Signed) J. P. SOUTHERN.

Sworn to before me, this 22 day of Feb'y, 1875.

[L. S.] (Signed) G. W. WALKER,
Not. Pub.

George W. Waterman, being sworn, says that the scrip, No. 73, for $1,000, which he now holds, he bought from H. W. Purvis in the latter part of 1872, for the sum of three hundred dollars; that the balance of the scrip proved and held by him, to wit, forty-four certificates of ten dollars each, and known as Washington scrip, he received from Messrs. Seibels & Ezell, with whom he had deposited original scrip to that amount; that deponent was informed by Mr. Seibels of the said firm that Col. J. J. Patterson, pres., had exchanged the Washington scrip for the original; that the deponent bought the said original scrip from J. C. Roach for the sum of one hundred and thirty-two dollars in the latter part of the year 1872.

(Signed) GEO. W. WATERMAN.

Sworn to before me, this 20th Nov., 1874.
(Signed) G. D. BRYAN,
Special Master.

W. B. Gulick, being sworn, says that he bought the five pieces of scrip for $1,000 each, proved by him, from Col. James P. Low, at that time chief engineer of the Blue Ridge road, for the sum of $12.50, in the month of June, 1872, in Columbia. Deponent does not remember from whom he bought the balance of the scrip, but he bought it about the same time and for about the same price.
(Signed) W. B. GULICK.

Sworn to before me, this 20th Nov., 1874.
(Signed) G. D. BRYAN,
Special Master.

C. D. Melton, being sworn, says that the two certificates of $5,000 each*ed*, proved and held by him, were given to him in Columbia by the Blue Ridge R'd *Ed* Co. in April or May, 1872, for
57 professional services rendered said Co. The balance of the scrip held and proved by him, to wit, $1,000, was also paid to him for professional services—$300 by Niles G. Parker, and the other $700 by other parties whom deponent does not remember.
(Signed) C. D. MELTON.

Sworn to before me, this 20th Nov., 1874.
G. D. BRYAN,
Special Master.

D. Gambrill, being sworn, says that the scrip held and proved by him, to wit, one hundred and seventy-five dollars, he purchased from John R. Cochran for one hundred and sixty-seven dollars, some time in the early part of the year 1873, in Columbia, S. C.
(Signed) D. GAMBRILL.

Sworn to before me, this 20th Nov., 1874.
(Signed) G. D. BRYAN,
Special Master.

J. L. Neagle, being sworn, says that the scrip held and proved by him, amounting in the whole to one hundred and ninety-one thousand seven hundred and sixty dollars, came into his possession in the following manner, to wit: That in the month of March, 1872, he purchased of W. J. Whipper, Esq., five thousand dollars for twenty-five hundred dollars; that in the month of June, 1872, he purchased of Hon. J. J. Patterson, president of the B. R. R. Co., one hundred and five thousand dollars for thirty thousand dollars; that in the month of June or July, 1872, he purchased of Hon. Niles G. ——— eighty thousand dollars for twenty-five thousand dollars; and that he purchased seventeen hundred & sixty dollars of Hon. W. H. Trescott for five hundred dollars; that all of the above scrip, was purchased by him in the original issue except the amount purchased

of Mr. Trescott, and fifty-one thousand dollars of the scrip was afterwards exchanged with Hon. Niles G. Parker, State treasurer, for an equal amount of the Washington scrip; that all of the said purchases were made in the city of Columbia, S. C.

(Signed) J. L. NEAGLE.

Sworn to before me, this 20th Nov., 1874.

(Signed) G. D. BRYAN,
Special Master.

58 J. B. Palmer, president of the Charlotte, Columbia and Augusta R. R., being sworn, says: That the scrip proved and held by him, to wit, certificates No. 107, 108, & 109, for five thousand dollars each, and certificates No. 1, 2, 3, 4, & 124, for one thousand dollars each, amounting in the aggregate to twenty thousand dollars, was purchased by Wm. Johnson, as president of the said r'l'r'd, of the late John D. Caldwell for the sum of fourteen thousand dollars on the 3d day of April, 1872, in the city of Columbia, and that the said scrip was purchased for the purpose of paying taxes on the said road.

(Signed) JOHN B. PALMER.

Sworn to before me, this 24th Nov., 1874.

(Signed) G. D. BRYAN,
Special Master.

James P. Low, one of the assignees of the Blue Ridge Railroad Company, a bankrupt, being sworn, says: That the scrip held and proved by him, amounting in the aggregate to the sum of ten thousand dollars, came into his possession as one of the assignees of the said company bankrupt, and is part of the estate, it being a portion of the scrip pledged to E. B. Wesley, of the city of New York, and which has been relinquished by him and turned over to the said assignees.

(Signed) JAMES P. LOW,
Assignee B. R. R. R. Co.

Sworn to before me, this 24th Nov., 1874.

(Signed) G. D. BRYAN,
Special Master.

F. S. Rodgers, being duly sworn, says: That scrip held and proved by him, to wit, Nos. 33 & 34, for five thousand dollars each, and Nos. 16, 21, 23, 26, and 27, for one hundred dollars each, of the original (printed) issue, and also Nos. 5409 to 5433, inclusive, and Nos. 5446 to 5452, inclusive, and Nos. 5459 to 5468, inclusive, and Nos. 5441, 5442, and 5456, for five dollars each, of what is known
59 as the Washington or Worthington issue, is held by him as collateral security to secure money loaned to one J. R. Cochran, of Anderson.

And further he knows not.

(Signed) F. S. RODGERS.

Sworn to before me, this 16th Dec., 1874.
(Signed) G. D. BRYAN,
Special Master.

C. H. Baldwin, being sworn, says: That the scrip held and proved by him, to wit, Nos. 31 & 32, for one thousand dollars each, of the original (printed) issue, and also thirty-six hundred and sixty-five dollars of Washington scrip, are held by him as collateral security for a loan of about seven hundred dollars made to Mr. H. G. Worthington, about the 10th day of May, A. D. 1873, and that the said scrip was lodged with him by the said H. G. Worthington.
(Signed) C. H. BALDWIN.

Sworn to before me, this 19th Dec., 1874.
(Signed) G. D. BRYAN,
Special Master.

Niles G. Parker, being sworn, says: That the scrip held and proved by him, to wit, $2,000, was purchased by him at different times and — various persons, in the city of Columbia, at seventy cents on the dollar; that he has had a large number of transactions in this scrip, and he cannot now state the persons from whom he obtained these identical pieces of scrip; that this scrip was purchased in the summer of 1872.
(Signed) NILES G. PARKER.

Sworn to before me, this 20th February, 1872.
(Signed) G. D. BRYAN,
S. Master.

60 U. S. OF AMERICA,
Fourth Circuit, District of South Carolina:

In Circuit Court. In Equity.

A. D. WILLIAMS, Complainant,
vs.
SOLOMON L. HOGE, Comptroller General, and others, Defendants.

Before me personally comes R. K. Scott, who, being duly sworn, deposes and says: That he is the owner of eighteen thousand two hundred dollars of revenue bond scrip, to wit, Nos. 24, 25, 26, for $5,000 each; 71, 76, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 205, 225, 226, 266, 267, 571, 572, 573, 593, and 594, for $100 each, except No. 205, for $1,000, whereof he obtained ten thousand dollars of Niles G. Parker by paying for said Parker a note given by him to one Hardy Solomon for ten thousand dollars; of W. J. Whipper five thousand dollars on a loan made to him of two thousand five hundred dollars; and three thousand and two hundred dollars of one H. H. Kimpton in payment of a debt owing by said Kimpton to deponent, amounting to two thousand two hundred and forty dollars.
(Signed) ROBERT K. SCOTT.

Sworn to before me, this 1st day of Dec., '74.
(Signed) W. J. WHIPPER,
Not. Pub.

In the Circuit Court U. S., South Carolina Dist., Fourth Circuit.

A. D. WILLIAMS *vs.* S. L. HOGE *et al.*

Personally appeared John B. Palmer and makes oath that he is the president of the Central National Bank, in the city of Columbia, in the State aforesaid; that this deponent was present in the city of New York and assisted in the negotiation by which E. B. Wesley became possessed of certain revenue bond scrip; that the negotiation took place in the early part of the year 1872; that a certain large amount of the bonds of the Blue Ridge Railroad Company had been lodged by the said corporation as security for loans made for the said company; that the State of
61 South Carolina, to retire the bonds of the said company on which the guarantee of the State had been endorsed by an act of the Legislature, ordered the issue — revenue bond scrip; that the result of the negotiation between the president of the Blue Ridge Railroad Company, this deponent assisting, & the said E. B. Wesley was that the said E. B. Wesley advanced the sum of three hundred and twenty-six thousand nine hundred and twenty-five dollars, which amount applied to loans then due relieved from pledge two millions four hundred and eighty-five thousand dollars par value of said bonds; and that the said E. B. Wesley, the bonds so relieved having been delivered to the State treasurer, received of the said revenue bond scrip nine hundred and seventy-five thousand dollars par value of the scrip. Deponent says he knows of his own knowledge that the above-stated sum of money was applied to the payment of loans to the Blue Ridge Railroad Company, secured by the amount of bonds hereinbefore stated; and because of the payment of the said loan the bonds of the Blue Ridge railroad to secure the same were redeemed, delivered to the State treasurer; that in consequence of the payment of the said loans the said bonds were retired back to the State; and for the repayment to the said E. B. Wesley of the sums so paid by him he had no other security than the said scrip, out of which he was to be repaid the said sum of money, with such expenses as he would incur in & about realizing the same. Deponent says that the State treasurer was present when the said sums of money were paid by the said E. B. Wesley to relieve the said bonds so hypothecated; & the said bonds guaranteed as aforesaid by the State were then and there cancelled by the State treasurer in the presence of this deponent.

(Signed) JOHN B. PALMER.

Sworn to before me, this 24th Nov., 1874.
(Signed) G. D. BRYAN,
Special Master.

STATE OF SOUTH CAROLINA, *Richland County:*

Before me personally appeared C. J. Iredell, cashier of the Carolina National Bank of Columbia, who, being duly sworn, says:
62 That the certificates Nos. 239, 238, 240, 241, 242, 243, 244, 245, and 246, for one hundred dollars each, of Blue Ridge scrip held by him and proven before G. D. Bryan, special master, in the case of A. D. Williams *vs.* S. L. Hoge *et al.*, was lodged with the said Carolina National Bank by the Hon. T. J. Mackey, as collateral to secure a note of the said Hon. T. J. Mackey, in the sum of five hundred dollars, and dated the 27th day of April, A. D. 1872.

(Signed) C. J. IREDELL, *Cash.*

Subscribed and sworn to before me, this 30th day of Nov'r, A. D. 1874.

[SEAL.] (Signed) WILLIE JONES,
Notary Public.

U. S. OF AMERICA, *Fourth Circuit, District of South Carolina:*

In Circuit Court. In Equity.

A. D. WILLIAMS, Complainant,
vs.
SOLOMON L. HOGE, Comp. General, *et al.*, Defendants.

Before me personally comes John P. Southern, banker, of Columbia, S. C., who, being duly sworn, says: That he has twenty thousand dollars par value of revenue bond scrip, No. 13, 14, 15, & 16, for five thousand dollars each, deposited with him by C. P. Leslie; that deponent is informed and believes that said Leslie received it of Thomas Steers, who was a contractor on the said Blue Ridge railroad, in payment for a blooded race-horse, valued at six thousand dollars.

(Signed) J. P. SOUTHERN.

Sworn to before me, this the 10th day of December, 1874.

(Signed) J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

UNITED STATES OF AMERICA, *Southern District of New York:*

Clarence L. Vanzant, being duly sworn, deposes and says: That he is the vice-president and manager of the American Bank
63 Note Company of New York; that under the order of Niles G. Parker, treasurer of the State of South Carolina, dated 30th March, 1872, the American Bank Note Company prepared revenue bond scrip for said State as follows, viz:

10,000	imp's	$20 A,	20 B,	50 A,	50 B,	Nos. 1 *to* 10000.
10,000	"	$5 A,	5 B,	10 A,	10 B,	" 1 *to* 10000.
16,666	"	$1 A,	1 B,	2 A,	2 B,	" 1 *to* 16666.
1	"	$2 A,	2 B,	No. 16667,		

making in all the amount of eighteen hundred thousand dollars ($1,800,000).

Of the above amount there was delivered to E. B. Wesley the following impressions, viz:

6,000 imp's	$20 A,	20 B,	50 A,	50 B,	Nos.	1 @ 6000.
5,000 "	85 A,	5 B,	10 A,	10 B,	"	1 @ 5000.
2,500 "	81 A,	1 B,	2 A,	2 B,	"	1 @ 2500,

making in all the amount of ten hundred and five thousand dollars ($1,005,000).

For this amount Mr. Wesley surrendered to deponent original scrip as follows, viz:

4 notes of	$5,000 ea.,	Nos.	29 @	32,	inclusive.
48 " "	do.	"	53 @	100	"
25 " "	do.	"	110 @	134	"
46 " "	do.	"	169 @	214	"
77 notes of	$5,000 ea.,	Nos.	218 @	294,	inclusive.
4 " "	$1,000	"	26 @	29	"
1 " "	do.	"	32,		

which original scrip deponent cancelled.

The balance of the revenue bond scrip printed by the American Bank Note Company is now in the possession of said company.

(Signed) C. L. VANZANT.

New York, 31 Oct., 1874.

Subscribed in my presence and sworn to before me by the
64 above-named Clarence L. Vanzant, this 31st day of October, A. D. 1874.

Witness my hand and official seal.

[SEAL.] CHARLES NETTLETON,
Commissioner for South Carolina in New York,
117 *Broadway, New York City.*

Subscribed and sworn to, this 16th day of November.

_____, _____.
Register in Bankruptcy, Southern Dist. of N. Y.

N. G. Parker, being sworn, says: I was treasurer of the State of So. Ca. in 1872. I remember the act of the Legislature providing for the issue of revenue bond scrip. I caused to be issued under that act the amount of scrip provided by act. I faithfully and fully complied with all the requirements of that act in the issue of the scrip. In consideration of the issue of that scrip I had returned to me, as State treasurer, all the bonds of the Blue Ridge R. R. Co. guaranteed by the State, except six hundred thousand dollars, which were in the hands of the financial agent of the State, and three or four other bonds which were not returned, of a thousand dollars each, supposed to be in the hands of the trustees.

I was aware that a portion of the bonds were redeemed from hypothecation for loans made to the B. R. R. R. Co., but all of the bonds, except those above mentioned, were returned to me by the president of the B. R. R. R. Co. The bonds so surrendered to me

were cancelled, and were left by me on file in the treasury office when I left that office.

The whole of the $1,800,000 of scrip was issued, less the *pro rata* amount necessary to take up the four bonds above mentioned. By the issue of the scrip the State was relieved of its guarantee upon the whole of the bonds.

The first or original issue of this scrip was printed in Columbia. There was afterwards an arrangement made by me & J. J. Patterson, Pres. B. R. R. R. Co., with the American Bank Note Co. to engrave the scrip. It was arranged between the bank note Co. and myself & J. J. Patterson, Pres. B. R. R. R. Co., that Mr. Wesley should be allowed to exchange the printed scrip held by him for the engraved scrip. I know of no other person who exchanged scrip. As
65 State treasurer I had no occasion to inform myself of the parties holding the bonds or to whom hypothecated, but only to issue the scrip when the bonds were surrendered to me. The surrender of the bonds was made to me very soon after the act was passed.

At the time the bonds were surrendered to me and I issued the scrip, there was no intimation to me from any quarter that the State intended to question its liability for that scrip. It was given out by me and received with the assurance that it was a valid obligation on the part of the State.

I have spoken of original scrip printed in Columbia & of the scrip engraved by the Am. Bank Note Co., of New York; there was other scrip printed in Washington by my order. This last scrip was printed on account of the Am. B'k Note Co. having been enjoined from issuing the scrip engraved by them at the suit of Bangs *et al.*, in New York. The scrip was intended to be a substitute for the scrip engraved by the Am. Bank Note Co., as it was supposed that that scrip could not be issued.

I suppose that there was upwards of $200,000 of this scrip printed and issued & exchanged by me. I took the original scrip up. In considering the validity of the scrip, the amount printed in Columbia was no more than I was authorized to issue under the act of the Legislature, and the holders of that scrip are unquestionably, in my opinion, the persons who hold the valid obligation of the State. Include among these Mr. Wesley for the amount of original scrip which he left with the Am. B'k Note Co. for the like amount of engraved scrip. I do not know of any over issue of this scrip.

For all of the Washington scrip that I issued original scrip was surrendered to me.

(Signed) NILES G. PARKER.

Sworn to before me, this 5 March, 1875.

(Signed) G. D. BRYAN,
Rec. 228–3. *Special Master.*

United States Circuit Court, District of South Carolina, Fourth Circuit.

A. D. WILLIAMS *vs.* SOLOMON L. HOGE *et al.*

The Hon. J. J. Patterson, being duly sworn, says: I was
66 president of the Blue Railroad Company from January, 1872, till the *the* road was put into bankruptcy. When I became president the company had no bonds guaranteed by the State; they were all in the hands of creditors. There was not a cent in the the treasury. There was nothing of value in the treasury that I knew of.

I was president of the company when the revenue bond scrip was issued. It was delivered to the company by the State treasurer. The whole of it was issued to the company except some three or four thousand dollars.

The first scrip exchanged for bonds was with the banks in Columbia. I do not remember the amount now, but I made a return to the court in Columbia in the case of McKay *et al.* I also got bonds from A. D. Williams & Co., of New York, to the amount of two million six hundred and twenty-five thousand dollars ($2,625,000) hypothecated for a loan of three hundred thousand dollars ($300,000). I borrowed this money from Mr. Wesley, of New York, to take up this loan, and gave him nine hundred and seventy-five thousand dollars ($975,000) of the scrip to secure him. I also gave Mr. Wesley thirty thousand dollars ($30,000) more of the scrip to secure a loan of eighteen thousand dollars ($18,000) which I used to buy bonds of the State of Tennessee, to purchase the interest of the said State in the Blue Ridge Railroad Company in Tennessee. I am not positive about the figures. I also got four hundred and seventeen thousand dollars ($417,000) of the bonds from A. D. Williams, of New York, which he held as a purchaser at a public sale from Mr. Iseman, who had made a loan to the company of twenty-five thousand dollars ($25,000) and held these bonds to secure the same. I hunted all the bonds of the company up, and all of them were in the hands of creditors except three or four. Six hundred thousand dollars ($600,000) were in the hands of the financial agent of the State, in New York.

The three hundred thousand dollars ($300,000) borrowed from A. D. Williams & Co. was expended by Mr. Cameron as financial agent, except about twenty-five thousand dollars which I used to pay obligations of the company.

During the time I was president of the road there was some work done on the road, and up to the time of the issuing the injunction restraining the receiving of the scrip. There was at least twenty thousand dollars ($20,000) of work done on the road while I was president.

67 The amount of work done by Mr. Steers from 1869 up to the time he stopped amounted to several hundred thousand dollars, a portion of which is unpaid.

Examined:

When I say the bonds were held by creditors, I mean that they were held by persons who made loans to the company and held these bonds as collateral, or who held them for debts due from the company.

By the issue of this scrip all the bonds guaranteed by the State were retired and cancelled, except the six hundred thousand dollars ($600,000) in the hands of the financial agent, and three or four as above mentioned.

JOHN J. PATTERSON.

Subscribed & sworn to before me, this 17 April, 1874.

G. D. BRYAN,
Special Master.

UNITED STATES OF AMERICA, *State of New York:*

[SEAL.] The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come, Greeting:

Know ye that we, having examined the records and files of our court of common pleas for the city and county of New York, do find there remaining of record a certain order, in the words and figures following, to wit:

At a special term of the court of common pleas for the city and county of New York, held at the court-house in the said city and county on the 14th day of June, A. D. 1872.

Present, the Hon. J. F. Daley, judge.

ASON BANGS
against
THE BLUE RIDGE RAILROAD COMPANY IN SOUTH CAROLINA, EDWARD B. WESLEY, JOHN J. PATTERSON, THOMAS STEERS, & THE AMERICAN BANK NOTE COMPANY, and others.

An order having been made in this cause on the 30th day of April last enjoining the defendants, as therein particularly set forth, until the further order of the court, and requiring the defendants to show cause why such injunction should not be con-
68 tinued and made perpetual, and a motion for the continuance of said injunction pursuant to said order to show cause coming on to be heard, and counsel for the defendants, The Blue Ridge Railroad Company in South Carolina and Edward B. Wesley, having been heard in opposition to said motion, and counsel for the plaintiff having been heard in support of said motion: On reading and filing the said order to show cause, and the complaint and affidavit on which said order was founded, and on reading and filing the affidavits of the defendants, Wesley, Palmer, & Steers, and an affidavit of L. D. Childs, and the demurrers of the defendants, The Blue Ridge Railroad Co'y and Niles G. Parker, State treasurer, and the answer of the defendant, Edward B. Wesley, read in opposition to said motion, and due deliberation having been had, it is now or-

dered that, upon the approval and filing of the bond hereinafter ordered, the said temporary injunction be, and the same is, so far modified as to authorize and permit the said American Bank-Note Company to deliver to and the said defendant, Edward B. Wesley, to take and receive such amount of the newly printed scrip in the complaint mentioned as shall be equivalent to the scrip now held by him as security for advances made to the said Blue Ridge Railroad Company in South Carolina, and to deal with such scrip in such manner as he may be entitled to under his contract with the said company, set forth in his answer to the complaint in this action. It is further ordered that the said temporary injunction be, and the same is hereby, continued so far as regards the residue of the scrip in the complaint mentioned not herein authorized to be delivered to the said defendant Wesley, as against the said defendant The Blue Ridge Railroad Company in South Carolina, its officers, agents, and servants. And it is further ordered that the said temporary injunction be continued as against the said defendant, Edward B. Wesley, as to any surplus of said scrip, and the proceeds of sales of said scrip which may remain in his hands after the satisfaction of all his claims for advances made by him to the said Blue Ridge Railroad Company in South Carolina, and the said defendant Wesley shall execute and file with the clerk of this court a bond, with sufficient sureties, to be approved by the court, in the sum of one hundred and thirty-five thousand dollars, conditioned to abide by the final judgment of this court in this action so far as the said judg-
69 ment may direct said defendant Wesley to account for and pay over and deliver any part of the proceeds of sales of such scrip, or the balance of unsold scrip.

Ent.: J. F. D., *J. C. C. P.*

All which we have caused by these presents to be exemplified, and the seal of our said court to be hereunto affixed.

Witness Hon. Hamilton W. Robinson, judge and presiding judge of our said court of common pleas for the city and county of New York, at the court-house in the city of New York, the 24th day of October, in the year of our Lord one thousand eight hundred and seventy four, and in the ninety-ninth year of the Independence of the United States.

[SEAL.] NATH. JARVIS, JR., *Clerk.*

I, Hamilton W. Robinson, judge and presiding judge of the court of common pleas for the city and county of New York, do hereby certify that Nathaniel Jarvis, Junior, whose name is subscribed to the preceding exemplification, is the clerk of the said court of common pleas, duly appointed and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said court of common pleas, and that the attestation thereof is in due form of law.

Dated New York, Oct'r 24, 1874.

[SEAL.] H. W. ROBINSON,
Judge of N. Y. Common Pleas.

STATE OF NEW YORK, }
City and County of New York, } ss:

I, Nathaniel Jarvis, Jr., clerk of the court of common pleas for the city and county of New York, do hereby certify that Hamilton W. Robinson, whose name is subscribed to the preceding certificate, is a judge and the presiding judge of the court of common pleas for the city and county of New York, duly elected and qualified, and that the signature of said judge to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 24th day of Oct'r, 1874.

[SEAL.] NATH. JARVIS, JR., *Clerk.*

70 *Schedule of Numbers & Character of Scrip Proved.*

1st. A. D. Williams. Original scrip certificates for one thousand dollars each, and numbered as follows:

From 54 to 60, inclusive.
" 127 to 129, "
" 196 to 200, "
" 41 to 48, "
" 171 to 181, "
" 191 to 192, " and the numbers 36, 65, 123, 137, 206, 203, & 204.

Certificates for five thousand dollars each, numbered as follows: From 155 to 168, inclusive; from 3 to 5, inclusive; and the numbers 1, 7, 9, 47, 146, 148, 149, 217.

Total, $165,000.

2nd. Edward B. Wesley. American Bank Note Company scrip certificates A & B for fifty dollars each, numbered as follows:

From 1 to 6000, inclusive.

Certificates A & B for twenty dollars each, numbered from 1 to 6000, inclusive.

Certificates A & B for ten dollars each, numbered as follows:
From 101 to 1001, inclusive.
" 1003 to 1101, "
" 1201 to 5000, "

Certificates A & B for five dollars each, and numbered as follows:
From 101 to 1001, inclusive.
" 1003 to 1101, "
" 1201 to 5000, " and the numbers 8, 9, 36, 63, 64, & 66.

Certificates B for five dollars each, and numbered 3 & 61.

Certificates A & B for two dollars each, and numbered as follows:
From 1 to 800, inclusive.
" 1001 to 2000, "

Certificates A & B for one dollar each, and numbered as follows:
From 1 to 800, inclusive.
" 1001 to 2000, "

Total, $994,870.

71 3rd. J. Fisher, trustee. Original scrip certificates for one thousand dollars each, and numbered as follows:

From 37 to 39, inclusive.
" 61 to 64, "
" 152 to 162, "
Total, $18,000.

4th. John B. Palmer, president of the Central National Bank. Original scrip—

Certificates for five thousand dollars each, numbered 22, 51, & 52.

Certificates for one thousand dollars each, and numbered from 104 to 121, inclusive, and the numbers 33, 40, 130, 131.

Total, $37,000.

5th. R. & W. C. Swatfield. Original scrip certificates for one thousand dollars each, numbered 125 & 126.

Certificates for one hundred dollars each, numbered as follows:

From 1187 to 1192, inclusive.
" 1208 to 1211, "
Total, $3,000.

6th. J. P. Southern. Original scrip certificates for five thousand dollars each, numbered from 150 to 153, inclusive, and numbers 19, 20, 295, & 296.

Certificates for one thousand dollars each, and numbered as follows:

From 144 to 151, inclusive.
" 132 to 135, "
" 138 to 141, "
" 96 to 103, "
" 17 to 19, " and the numbers 202, 122, 42, 41, 34, 35.

Certificates for one hundred dollars each, numbered 17, 18, 19, 94, & 95.

Total, $70,500.

7th. Geo. W. Waterman. Certificates of original scrip for one thousand dollars, numbered 73.

Certificates of Washington issue for ten dollars each, numbered from 9651 to 9694, inclusive.

Total, $1,440.

8th. W. B. Gulick. Original scrip certificates for one thousand dollars each, numbered from 74 to 77, inclusive, and number 95.

72 Certificates of one hundred dollars each, numbered from 28 to 31, inclusive.

Total, $5,400.

9th. C. D. Melton. Original scrip certificates for five thousand dollars each, numbered 135 & 136.

Certificates for one hundred dollars each, numbered from 41 to 44, inclusive, and the numbers 33, 35, 47, 49, 51, & 53.

Total, $11,000.

10th. D. Gambrill. Certificates of original scrip for one hundred dollars each, numbered 25.

Certificates of Washington issue, numbered 5445, 5453, 5454, 5455, 5439, 5440, 5443, 5444, 5407, 5408, 5402, 3040, 3039, 3044, 3043, for five dollars each.

Total, $175.

11th. J. L. Neagle. Original scrip certificates for five thousand dollars each, and numbered—

From 101 to 106, inclusive.
" 35 to 37, " and the numbers 10, 12, 44, 46, 48, 50, 137, 144, 216, & 297.

Certificates for one thousand dollars each, numbered—

From 78 to 94, inclusive.
" 20 " 22, "
" 15 " 18, " and numbers 5, 6, 8, 11, 13, 194, 194, & 195.

Certificates for one hundred dollars each, numbered—

From 96 to 106, inclusive.
" 89 " 91, "
" 61 " 64, "
" 56 " 58, "
" 13 " 15, "
" 138 " 144, "
" 178 " 182, "
" 207 " 210, "
" 218 " 220, "
" 222 " 224, "
" 247 " 253, "
" 271 " 277, "
" 379 " 383, "
" 564 " 570, "
" 583 " 591, "
From 597 to 599, inclusive.
73 " 1177 " 1186, "
" 1193 " 1200, " and the numbers 5, 34, 40, 45, 50, 54, 66, 80, 175, 186, 203, 212, 213, 226, 231, 255, 257, 258, 268, 269, 578, 595, 602, 603, 621, 622, 1263, & 1207, Washington issue.

Certificates for ten dollars each, numbered—

From 751 to 5500, inclusive.
" 6001 " 6108, "
" 6116 " 6165, "
" 6167 " 6182, "

Certificates for five dollars each, numbered—

From 1007 to 1016, inclusive.
" 3685 " 3687, "
" 3937 " 3940, "
" 3945 " 3947, "
" 3955 " 3957, "
" 3959 " 3963, "
" 3975 " 3979, "
" 4317 " 4324, "
" 4338 " 4340, "
" 4346 " 4377, "
" 4393 " 4396, "
" 4409 " 4446, "
" 4465 " 4480, "

From 4485 to 4500, inclusive.
" 3917 " 3919, "
" 3849 " 3863, "
" 3873 " 3876, "
From 4001 to 4200, inclusive.
" 2301 " 2400, "
" 3603 " 3628, "
" 3513 " 3592, "
" 4201 " 4264, "
" 3501 " 3504, "
" 3593 " 3600, "
" 3819 " 3822, "
" 3920 " 3936, " and the numbers 5003, 5007, 5015, 4333, 4341, 4342, 4343, 3682, 3683, 3693, 3694, 3696, 3949, 3950, 3952, 3972, 3969, 3964, 3869, 3870, 3865, 3845, 4483, 4344, 3632, 3691, 3681, 3965, 3967, 3971.

Total, $191,760.

74 12th. John B. Palmer, as president of the Columbia, Augusta & Charlotte r'd r'd, original scrip certificates for five thousand dollars each, numbered from 107 to 109, inclusive.

Certificates for one thousand dollars each, numbered from 1 to 4, inclusive, and the number 124.

Total, $20,000.

13th. Jas. P. Low, assignee, American Bank Note Co. scrip—

Certificates A & B for ten dollars each, and numbered—
From 1 to 20, inclusive.
From 22 to 23, inclusive.
" 25 to 58, "
" 60 " 67, "
" 68 " 100, "
" 1102 " 1200, "

Certificates A for ten dollars, numbered 24.

Certificates A & B for five dollars each, numbered—
From 17 to 35, inclusive.
" 37 " 60, "
From 67 to 100, inclusive.
" 1102 " 1200, " and the numbers 1, 2, 4, 6, 7, 10, 15, 62, & 65.

Certificates A for five dollars each, numbered 3, 11, 61.

Certificates B for five dollars, numbered 5.

Certificates A & B for two dollars each, numbered—
From 801 to 1000, inclusive.
" 2001 " 2500, "

Certificates A & B for one dollar each, numbered—
From 801 to 1000, inclusive.
" 2001 " 2500, "

Total, $10,000.

14th. F. S. Rodgers. Original scrip certificates for five thousand dollars each, numbered 33, 34.

Certificates for one hundred dollars each, numbered 16, 21, 23, 26, & 27.

Washington scrip certificates for five dollars each, numbered—
From 5409 to 5433, inclusive.
From 5446 to 5452, inclusive.
" 5459 " 5468, " and numbers 5441, 5442, & 5456.
Total, $10,725.

75 15th. C. H. Baldwin. Original scrip certificates for one thousand dollars each, numbered 31 & 32.
Washington scrip certificates for ten dollars each, numbered—
From 501 to 527, inclusive.
" 529 " 533, "
" 563 " 608, "
" 617 " 650, "
" 653 " 660, "
" 699 " 724, "
" 733 " 736, "
" 745 " 750, " and the numbers 534, 535, 537, 539, 540, 544, 551, 554, 561, 687, 688, 691, 692, 729, 730.
Certificates for five dollars each, numbered—
From 3022 to 3033, inclusive.
From 3045 to 3052, inclusive.
" 3057 " 3068, "
" 3077 " 3080, "
" 3117 " 3125, "
" 3129 " 3132, "
" 3141 " 3152, "
" 3173 " 3176, "
" 3185 " 3188, "
" 3193 " 3200, "
" 3213 " 3228, "
" 3237 " 3264, "
" 3281 " 3288, "
" 3290 " 3292, "
" 3305 " 3308, "
" 3360 " 3365, "
" 3377 " 3399, "
" 3409 " 3478, "
" 3480 " 3500, " and the numbers 3073, 3074, 3083, 3084, 3107, 3108, 3137, 3138, 3155, 3156, 3161, 3162, 3169, 3170, 3041, 3042, 3179, 3180, 3301, 3302, 3311, 3312, 3347.
Total, $5,665.
16th. Niles G. Parker. Original scrip certificates for one thousand dollars, numbered 164.
Certificates for one hundred dollars each, numbered from 187 to 190, inclusive, and the numbers 199, 215, 592, 634, 576, 577.
Total, $2,000.

76 17th. R. K. Scott. Original scrip certificates for five thousand dollars each, numbered 24, 25, & 26.
Certificates for one thousand dollars, numbered 205.
Certificates for one hundred dollars each, numbered—
From 76 to 79, inclusive.
" 81 " 88, "

From 571 to 573, inclusive and the numbers 71, 225, 226, 266, 267, 393, & 594.

Total, $18,200.

18th. C. J. Iredell, cashier. Original scrip certificates for one hundred dollars each, numbered from 238 to 246, inclusive.

Total, $900.

19th. J. P. Southern, agent. Original scrip certificates for five thousand dollars each, numbered from 13 to 16, inclusive.

Total, $20,000.

G. D. BRYAN,
Special Master.

77 Supreme Court of the United States. October Term, 1878.

AMOS D. WILLIAMS, Appellant.
vs.
JOHNSON HAGOOD, substituted for Thomas C. Dunn, Comptroller General of South Carolina; WILLIAM GURNEY, County Treasurer of Charleston County, *et al.* } No. 26.

Appeal from the Circuit Court of the United States for the District of South Carolina.

Mr Justice Strong delivered the opinion of the court.

This is a bill in equity against the comptroller general of the State of South Carolina, the county treasurer of Charleston county, in said State, and the assignees in bankruptcy of the Blue Ridge Railroad Company, in which the relief sought is an injunction commanding the comptroller "to cease from refusing to levy a tax for retiring" certain certificates of the State indebtedness, and commanding the county treasurer "to cease from refusing to receive the same for taxes and dues to the State, except to pay interest on the public debt."

The facts of the case, so far as they are exhibited by the bill, and so far as they are material for present consideration, are as follows:

By an act of the Legislature of the State, enacted March 2d, 1872, reciting in its preamble that, in pursuance of a former act, the guaranty of the faith and credit of the State had been endorsed on four millions of dollars of bonds issued by the Blue Ridge Railroad Company, and that it was desired to recover and destroy the bonds thus issued and relieve the State from the liability incurred by its endorsement and guaranty thereof, the State treasurer was directed, with the written consent of the railroad company, to require the financial agent of the State to deliver to him for cancellation all the bonds of the company endorsed and guaranteed as aforesaid, then in the agent's possession and held by him as collateral security for advances.

The second section of the act enacted that upon the surrender by the company to the State treasury of the balance of the said four millions of dollars of bonds thus guaranteed by the State the
78 State treasurer should be authorized and required to deliver to the president of the railroad company treasury certificates of

indebtedness (styled revenue bond scrip) to the amount of one million eight hundred thousand dollars, executed in a manner directed afterwards in the act. And if the company should not be able to deliver all of said bonds at one time, the act required the treasurer to deliver to the said president such amount of the treasury certificates as should be proportioned to the amount of bonds delivered.

The third section made it the duty of the State treasurer, in order to carry out the purposes of the act, to have treasury certificates of indebtedness prepared, to be known and designated as "revenue bond scrip of the State of South Carolina," which should be signed by the treasurer, and which should express that the sum mentioned therein is due by the State of South Carolina to the bearer thereof, and that the same would be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

The fourth section pledged the faith and funds of the State for the ultimate redemption of the scrip, and required county treasurers to receive it in payment of all taxes levied by the State, except in payment of special tax levied to pay interest on the public debt. It also required the State treasurer and all other public officers to receive the same in payment of all dues to the State; and still further to provide for its redemption, the section levied an annual tax of three mills on the dollar in addition to all other taxes on the assessed value of all taxable property in the State, to be collected in the same manner and at the same time as might be provided by law for the levy and collection of the regular annual taxes of the State. And the State treasurer was required to retire, at the end of each year from their date, one-fourth of the amount of the treasury scrip authorized to be issued, and to apply to such purpose exclusively the taxes by the act required to be levied.

The sixth section required the guaranteed bonds to be cancelled and destroyed on their delivery to the treasurer.

In obedience to this act the revenue bond scrip was prepared and signed by the State treasurer. When this was done a large part of the four millions of dollars of bonds of *of* the railroad company endorsed and guaranteed by the State had been sold or were
79 pledged as securities for money borrowed by the company.

The complainant was a purchaser for value of four hundred and seventeen thousand dollars thereof, and he was the *bona fide* owner and holder of them when the act of March 2d, 1872, was passed. Relying upon the faith of the State as pledged in the said act of its Legislature, and in the said certificates of indebtedness, he consented to exchange the bonds, amounting to $417,000, for said treasury certificates, amounting to $166,000, and the exchange was made. His bonds, guaranteed as above stated, were delivered to the State treasurer, and they have been cancelled. The railroad company and the State have thus been discharged from all obligation to pay the bonds, and the complainant holds in lieu thereof only the certificates of indebtedness to the extent of $166,000.

After this exchange had been effected, the bill charges, and it appears, the State, in various ways, legislated in such a manner as

practically to deny the obligation apparently assumed in the certificates of indebtedness, or revenue bond scrip. By an act approved October 22, 1873, the Legislature repealed the fourth section of the act of March 2, 1872, by which a tax was levied for the redemption of the scrip, and forbade the comptroller general to levy any tax for any purpose, unless expressly thereafter authorized therefor. By another act approved December 22, 1873, the county auditors and county treasurers of the State were forbidden to collect or cause to be collected any tax other than such as were levied by that act, unless expressly authorized thereafter so to do. This legislation was manifestly inconsistent with the undertaking of the State expressed in the act of March 2, 1872, and in the revenue bond scrip issued thereunder, and its constitutionality and obligatory force would be a legitimate subject for consideration if the complainant had placed himself in a position to invoke our judgment. But he has not. His bill does nor aver that he has been injured, or will be injured, by this legislation, or by any act or neglect of the comptroller general or the county treasurer. It does not aver that the comptroller general has neglected or refused to perform every duty imposed upon him by the statute under which the revenue bond scrip was issued, nor even that he threatens such neglect or refusal. It does not aver that the county treasurer has refused, or even threaten to refuse, receiving the complainant's scrip, or any scrip, in payment of
80 taxes or dues to the State, other than taxes levied to pay the interest on the State debt. It does not aver any demand from the State treasury or any tender to the county treasurer. Its object is plainly to obtain from this court a declaration that the legislative acts of October 22d and December 22d, 1873, are unconstitutional, because impairing the obligation of the contract made by the act of 1875, and the certificates thereby authorized and thereunder issued, and this without any averment that the complainant will be injured by them. The question presented to the court is, therefore, merely an abstract one; such an one as no court can be called upon to decide, and the bill shows no equity in the complainant. Hence it was properly dismissed in the court below and it must be dismissed here, but without prejudice to the complainant's right to bring and prosecute another suit, when he shall be in a condition to exhibit any equity in himself.

It is so ordered.

D. W. MIDDLETON,
C. S. C. U. S.

81 *Statutes of the State of South Carolina Relating to the Blue Ridge Railroad Company, its Roads, and the Scrip in Question, and in any Manner Affecting the Case.*

An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina.

Whereas the General Assembly of the State of South Carolina, by an act passed the twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-four, and entitled "An

act to authorize aid to the Blue Ridge Railroad Company in South Carolina," provided "that the faith and funds of the State of South Carolina be, and the same are hereby, pledged to secure the punctual payment of any contracts which shall be made for borrowing money by the Blue Ridge Railroad Company in South Carolina, from any person or persons, company or companies, corporation or corporations, to any amount not exceeding one million of dollars, either in the United States or Europe; and when such contracts shall be made by bond or bonds signed by the president of the company, under its seal, and countersigned by the secretary and treasurer thereof, it shall be the duty of the comptroller general to endorse thereon that the faith and funds of the State are pledged to the faithful performance of said contract or contracts, as it respects the punctual payment both of the principal and interest, according to the terms of the said contract or contracts: Provided, That certain conditions particularly recited in section seven of said act be first executed," and the said Blue Ridge Railroad Company in South Carolina secured the said endorsement by a mortgage of all their property in the States of South Carolina, Georgia, North Carolina, and Tennessee, duly executed and recorded; and whereas the comptroller general of the State has not endorsed any of the bonds issued by the said Blue Ridge Railroad Company in South Carolina, under the authority of said act; and whereas the conditions imposed upon said endorsement by said section seven have become impossible and injudicious, while the necessity of the completion of said road has become more urgent in the interest of the State; therefore—

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SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, Without reference to the said provisions and conditions, whenever any contract or contracts may be made by the president of the said company, under its seal, and as provided by said act, and not exceeding one million of dollars, it shall be the duty of the comptroller general to endorse thereon that the faith and funds of the State are pledged to the faithful performance of the said contract or contracts, as respects the punctual payment both of the principal and interest, according to the terms of the said contract or contracts: Provided, That so much of said issue as may be necessary, not exceeding three hundred thousand dollars, shall be applied to the redemption of the present bonded debt of the said company.

SEC. 2. That the faith and the funds of the State of South Carolina be, and the same are hereby, pledged to secure the punctual payment of any contracts which shall be made by the Blue Ridge Railroad Company in South Carolina, from any person or persons, corporation or corporations, to an additional amount not exceeding three millions of dollars, either in the United States or Europe; and when such contracts shall be made by bond or bonds, signed by the president of the said company, under its seal, and countersigned by the secretary or treasurer thereof, it shall be the duty of the comptroller general of this State to endorse thereon that the faith and

funds of the State of South Carolina are pledged to the faithful performance of the said contract or contracts, as it respects the punctual payment both of the principal and interest, according — the terms of said contract or contracts: Provided, That the interest made payable thereon shall not exceed seven per cent. per annum, in quarterly or half yearly payments. And that as soon as the comptroller general shall have made any such endorsement on any such contract, the whole estate, property, and funds in the State of South Carolina, Georgia, North Carolina, and Tennessee, which the said company may then possess, or shall afterwards acquire, shall thenceforth stand pledged and mortgaged to the State, without any further act or deed on the part of the company, for the faithful and
83 punctual performance on the part of said company of such contract in priority and preference of any other debt which the said company may hereafter create or incur: And further provided, That the said bonds or any part thereof shall not be used unless upon the express condition that upon application to the Congress of the United States, or to private capitalists, the amount of three millions of dollars in currency, or so much of that sum as may be necessary, shall be furnished in exchange or upon the security of said bonds.

SEC. 3. The said company shall have the right to increase the board of directors to fifteen members, of which board the Governor of the State shall be *ex officio* a member; that there shall be an additional officer to be known as vice-president, whose duties and salary shall be prescribed by the board; and that in all future meetings of the stockholders of said company the Governor of the State is hereby authorized to represent the stock of the State either in person or by the appointment of proxies.

SEC. 4. The Governor of the State is hereby authorized to advance to the said company twenty thousand dollars from the treasury of the State, to repair and keep in working condition the said road, if such amount should be necessary, in his opinion.

SEC. 5. Be it further enacted, That all provisions of the charter of the Blue Ridge Company, and all acts or parts of acts inconsistent with this act be, and the same are hereby, repealed.

In the Senate — House the fifteenth day of September, in the year of our Lord one thousand eight hundred and sixty-eight.

L. BOOZER,
President of the Senate.
FRANKLIN J. MOSES, JR.,
Speaker House of Representatives.

Approved:
ROBERT K. SCOTT, *Governor.*

An act to promote the consolidation of the Greenville and Columbia Railroad Company and the Blue Ridge Railroad Company.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in
84 General Assembly, and the authority of the same, That the act entitled "An act to amend the charter of the Greenville

and Columbia Railroad Company," passed by the General Assembly of this State on the 20th day of December, 1853, be, and the same is hereby, re-enacted, with the following amendments or alterations:

SEC. 2. That for the purpose of extending or building or constructing a railroad from Greenville all of the provisions of sections 9, 10, 11, and 12 of an act entitled "An act to authorize the formation of the Greenville and Columbia Railroad Company," passed on the 15th day of December, in the year 1845, be, and the same are hereby, re-enacted, with the following amendments or alterations:

SEC. 3. That the Greenville and Columbia Railroad Company is authorized, so far as practicable, to purchase, connect, or unite with any connecting railroad or railroads, and especially to extend railroad communication to Knoxville, Tennessee, and to Asheville, in North Carolina: Provided, That if the Greenville and Columbia Railroad Company shall fail to construct and finish the said railroad, including such other railroad or railroads as it may unite with or acquire, to the line between this State and North Carolina and Tennessee, within five years from the final passage of this act, the right to further construct said railroad to Knoxville and to Asheville shall cease, and the time limited therefor is hereby extended five years from the final passage of this act; but this limitation shall not impair nor affect any rights of any railroad or railroads acquired, united with, or constructed, so far as acquired, united with, or constructed, at the end of the time hereby limited, nor shall anything contained in this act impair or limit the right or privilege to consolidate or unite with any railroad or railroads under any general railroad law or laws; that the said Greenville and Columbia Railroad Company shall have power to construct and build, upon the most practicable route, a branch of their road from some point on the line of their road at or east of Anderson Court-House and west of the Saluda river to Aiken or Hamburg, and there connect with any railroad incorporated under the laws of this State; and also shall have the power to construct and build, upon the most practicable route, a branch of their road from Abbeville Court-House
85 to the Savannah river, in the direction of Washington, Georgia; also, that the said company shall have the power to construct and build, upon the most practicable route, a railroad from Spartanburg Court-House to the North Carolina line, in the direction of Asheville or Rutherfordton, North Carolina.

SEC. 4. That, in view of the consolidation of the Greenville and Columbia Railroad Company and the Blue Ridge Railroad Company, the action of the said Blue Ridge Railroad Company in making the bonds authorized under the act of September 15, 1868, and of the comptroller general of the State in endorsing the same, and thereby pledging the faith and funds of the State to the payment of said bonds, is hereby ratified and confirmed; and that the making and execution by said Blue Ridge *Ridge* Railroad Company and said other companies of the mortgage aforesaid to Henry Clews, Henry Gourdin, and George S. Cameron, to secure the payment of the bonds aforesaid, is also ratified and confirmed; and said mort-

gage is declared to be a lien prior to that of the State on all property described in said mortgage, and on the entire line of the road aforesaid, and on all the properties of said several companies, or which they, or either of them, may hereafter acquire; but nothing in this act contained shall be construed to divest the State of its lien on the estate and property of the said several railroad companies, or of either of them, for its endorsement of the bonds aforesaid, but said lien is postponed to, and declared to be subject and subordinate to, that of the mortgage, hereinbefore mentioned, to Henry Clews, Henry Gourdin, and George S. Cameron, trustees.

SEC. 5. That all statutory or other liens or lien, encumbrances or encumbrance, equities or equity, except the mortgage encumbrances now upon the property, assets, effects, rights, and franchises of said Greenville and Columbia Railroad Company, or any part thereof, and also except the mortgage herein authorized, shall be, and are, or is hereby, made subsequent to the mortgage encumbrances now in existence thereon, and subsequent to the one herein authorized, so that the holders of the bonds secured by said mortgages, or either of them, shall have a lien and security as between each other, according to the time said mortgages have been, or shall be, recorded, and a prior lien to all other liens or encumbrances whatsoever, any law or laws to the contrary notwithstanding.

SEC. 6. The following clause in section 2 of the act of Sep-
86 tember 15, 1868, to authorize additional aid to the Blue Ridge Railroad Company, in South Carolina, viz: "And further provided, That the said bonds, or any part thereof, shall not be used, unless upon the express condition that upon application to the Congress of the United States, or to private capitalists, the amount of three millions of dollars in currency, or so much of that sum as may be necessary, shall be furnished in exchange, or upon the security of said bonds," is hereby repealed.

SEC. 7. That after the consolidation of the Greenville and Columbia Railroad Company with the Blue Ridge Railroad Company, the bonds now held by the Greenville and Columbia Railroad Company and the Blue Ridge Railroad Company shall be endorsed by the consolidated company.

SEC. 8. That if said consolidated company shall fail to pay its interest on its guaranteed debt for two years, it shall be the duty of the comptroller general of the State, and he shall have the power, to take immediate possession of said road, with all its appurtenances, and lease the same to responsible parties, who shall have control thereof until the General Assembly shall, by law, provide for the settlement of the affairs of said company in the interest of all its creditors.

SEC. 9. That the said Greenville and Columbia Railroad Company and the Blue Ridge Railroad Company shall forever continue and be a body corporate, capable of suing and being sued in any court of competent jurisdiction.

SEC. 10. That all acts or parts of acts inconsistent with this act, or any part thereof, are, for the purposes of this act, but for no other

purpose, hereby amended, modified, or repealed, as the case may require, so as to conform to the true intent and meaning of this act.

SEC. 11. This act shall take effect immediately.

Approved March 6, 1871.

An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company, by providing for the securing and destruction of the same.

Whereas the State of South Carolina has, by and in pursu-
87 ance of the provisions of an act approved the fifteenth day of September, A. D. 1868, entitled "An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina," endorsed a guaranty of the faith and credit of the State on four millions of dollars of bonds, issued by the said Blue Ridge Railroad Company, comprehending the Blue Ridge Railroad Company in South Carolina, the Blue Ridge Railroad Company in Georgia, the Tennessee River Railroad Company in North Carolina, the Knoxville and Charleston Railroad Company in Tennessee, and the Pendleton Railroad Company in South Carolina, for the purpose of aiding the speedy completion of the said railroad, which bonds are liable for the debts of the said railroad companies; and whereas the present condition of the finances of the State and of said companies is such as to make the further continuance of said bonds in the market inexpedient and unadvisable and a serious injury and prejudice to the credit of the State; and whereas the existence of the said four millions of dollars of bonds so guaranteed creates a large liability upon the part of the State, which the treasurer may be required to meet at unforeseen and inopportune times; and whereas the liability of the State, on account of such guaranty, should be faithfully met and discharged: Therefore, in order to secure the recovery and destruction of the bonds and coupons of the said company issued under and in pursuance of the provisions of the aforesaid act, now pledged in the city of New York and elsewhere, and to relieve the State of all liabilities whatsoever by reason of its endorsement and guaranty of said bonds:

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina now met and sitting in General Assembly, and by the authority of the same, That the State treasurer is hereby directed, with the consent in writing of the president of the Blue Ridge Railroad Company in South Carolina, to require the financial agent of the State, in the city of New York, immediately to deliver to the State treasurer all the bonds of the Blue Ridge Railroad Company, endorsed and guaranteed by the State of South Carolina, which are now in his possession and held by him as collateral security for advances made by the said financial agent, by the order of the financial board, to the Blue Ridge Railroad Company; and upon the delivery of said bonds the treasurer is
88 hereby required to cancel the same, in the manner hereinafter directed; and the said Blue Ridge Railroad Company shall thereupon be discharged from all liability to the State on account of such advances.

SEC. 2. That upon the surrender by the said company to the State treasury of the balance of the said four millions of dollars of bonds, issued by the said Blue Ridge Railroad Company, and guaranteed by the State, the State treasurer is hereby authorized and required to deliver to the president of the Blue Ridge Railroad Company in South Carolina treasury certificates of indebtedness (styled revenue bond scrip) to the amount of one million eight hundred thousand dollars, the said certificates to be executed in the manner hereinafter directed; and if the said company shall not be able to deliver all of said bonds at one time, the treasurer is authorized and required to deliver to the said president such amount of such treasury certificates as shall be proportioned to the amount of bonds delivered.

SEC. 3. That to carry out the purposes of this act, the State treasurer is hereby authorized and required to have printed, or engraved on steel, as soon as practicable, treasury certificates of indebtedness, to be known and designated as revenue bond scrip of the State of South Carolina, in such form, and of such denomination as may be determined on by the State treasurer and the president of the Blue Ridge Railroad Company in South Carolina to the amount of one million eight hundred thousand dollars; which revenue bond scrip shall be signed by the State treasurer, and shall express that the sum mentioned therein is due by the State of South Carolina to the bearer thereof, and that the same will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

SEC. 4. That the faith and funds of the State are hereby pledged for the ultimate redemption of said revenue bond scrip, and the county treasurers are hereby required to receive the same in payment of all taxes levied by the State, except in payment of special tax levied to pay interest on the public debt, and the State treasurer and all other public officers are hereby required to receive the same in payment of all dues to the State; and still further to provide for the redemption of said revenue bond scrip an annual tax of three mills on the dollar, in addition to all other taxes, on
89 the assessed value of all taxable property in the State, is hereby levied, to be collected in the same manner and at the same time as as may be provided by law for the levy and collection of the regular annual taxes of the State; and the State treasurer is hereby required to retire, at the end of each year from their date, one-fourth of the amount of the treasury scrip hereby authorized to be issued, until all of it shall be retired, and to apply to such purpose exclusively the taxes hereby required to be levied.

SEC. 5. That if any such revenue bond scrip is received in the treasury for the payment of taxes, the treasurer be, and he is hereby, authorized to pay out such revenue bond scrip in satisfaction of any claim against the treasury, except for interest that may be due on the public debt.

SEC. 6. That upon the delivery to the State treasurer of the said guaranteed bonds of the Blue Ridge Railroad Company, or of any part of them, the treasurer is hereby required to cause the same to

be cancelled and destroyed, in the presence of the president of the Blue Ridge Railroad Company in South Carolina and in the presence of a joint committee of the senate and house of representatives of this State, to be for that purpose appointed.

SEC. 7. That whenever the whole number of the said guaranteed bonds shall have been delivered to the treasurer and cancelled, as required by the provisions of this act, the lien of the State of South Carolina upon the estate, property, and funds of the said Blue Ridge Railroad Company in this State and of the other associated companies in the States of Georgia, North Carolina, and Tennessee, as secured by the provisions of an act entitled "An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina," passed on the fifteenth day of September, anno Domini one thousand eight hundred and sixty-eight, and all other claims or liens which are held by the State against said company or companies, on account of said guaranty, shall, from thenceforth be forever discharged and released; and should the said company be unable, from any cause, to deliver all of said bonds, such liens shall be discharged and released to an extent which shall be proportional to the amount of such bonds actually delivered.

SEC. 8. That if the said company shall accept the provisions of this act, it shall be authorized, if the board of directors may
90 desire, to change the corporate name of the company to that of the "Knoxville and South Carolina Railroad Company," and shall have power to extend its railroad, or to construct branches thereof, to any points or places in this State, with all the powers and privileges with which the said company is now vested by the provisions of its charter; and the said company shall also have power to issue bonds, and to secure the same by a mortgage, to such amount and in such manner as the board of directors may direct. And all sales of stock in the said Blue Ridge Railroad Company in South Carolina and its associate companies, formerly held by the State and sold by the commissioners of the sinking fund, be, and they are hereby, confirmed.

SEC. 9. That if any person shall forge or counterfeit the treasury scrip hereby authorized to be issued, or shall, directly or indirectly, aid or assist in the forging or counterfeiting of such scrip, or shall issue or in any manner use any such forged or counterfeited, he shall, on conviction thereof, be fined in the discretion of the court, and shall be imprisoned in the penitentiary for a term not exceeding ten years.

IN THE HOUSE OF REPRESENTATIVES,
COLUMBIA, S. C., *March* 2, 1872.

On the question, "Shall this act become a law, the objections of his Excellency the Governor to the contrary notwithstanding?" the yeas and nays were ordered, pursuant to provisions of the constitution, resulting, yeas 84, nays 18; and ordered to be sent to the Senate.

By order: (Signed) A. O. JONES, *C. H. R.*

IN THE SENATE, COLUMBIA, S. C., *March* 2, 1872.

On the question, "Shall this act pass and become a law, the objections of his Excellency the Governor to the contrary notwithstanding?" the yeas and nays were ordered, pursuant to provisions of the constitution (Art. III, Sec. 22), the act passed by a *viva voce* vote of, yeas 22, nays 6; and ordered to be returned to the House of Representatives.

By order: (Signed) J. WOODRUFF,
Clerk of Senate.

91 An act to repeal section four (4) of an act entitled "An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company, by providing for the securing and destruction of the same," approved March 2, 1872, and to repeal so much of section 72, chapter XII, title III, of the general statutes, as authorizes the State auditor to give notice annually to each county auditor of the rates per centum to be levied for various State purposes.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That section four (4) of an act entitled "An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company, by providing for the securing and destruction of the same," approved March 2, 1872, providing for an annual tax of three mills on the dollar for the redemption of the revenue bond scrip, be, and the same is hereby, repealed.

SEC. 2. That so much of section seventy-two (72), chapter XII, title III, as directs that the State auditor shall, on or before November fifteenth, annually give notice to each county auditor of the rates per centum authorized by law to be levied for various State purposes, be, and the same is hereby, repealed, and the comptroller general is hereby forbidden to levy any tax for any purpose whatever, unless expressly hereafter authorized so to do by statute.

Approved October 22, 1873.

92 *Transcript of Record.*

Supreme Court of the United States.

AMOS D. WILLIAMS, Appellant,
vs.
THOMAS C. DUNN, Comptroller General of South Carolina WILLIAM GURNEY, County Treasurer of Charleston County, *et al.* } No. 228.

Appeal from the Circuit Court of the United States for the District of South Carolina.

93 THE UNITED STATES OF AMERICA, } *to wit:*
District of South Carolina, Fourth Circuit, }

At a circuit court of the United States for the fourth circuit, in and

for the district of South Carolina, begun and holden at Charleston, in the district aforesaid, on the first Monday in April, A. D. 1875, before the honorable Chief Justice M. R. Waite, and the honorable Hugh L. Bond, circuit court judge of the United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

AMOS D. WILLIAMS, a Citizen of the State of New York,

vs.

SOLOMON L. HOGE, Comptroller General, a Citizen of the State of South Carolina, & others.

Be it remembered that heretofore, to wit, the first Monday in April, A. D. 1875, the said Amos D. Williams impleaded the said Solomon L. Hoge, comptroller general of the State of South Carolina; William Gurney, county treasurer of Charleston county; J. P. Southern, G. W. Williams, and J. P. Low, assignees in bankruptcy of the Blue Ridge Railroad Company, in a bill of complaint for injunction, relief, &c., as follows:

Bill.

In the United States Circuit Court, Fourth Circuit, South Carolina District.

To the judges of the circuit court of the United States for the southern district of South Carolina:

Amos D. Williams, of the city of New York, and a citizen of the State of New York, brings this his bill of complaint, in his own behalf and in behalf of all others holding and claiming in like right with him, as to the matters hereinafter stated, who will come in, prove their claims, and contribute to the expenses of this suit, against Solomon L. Hoge, called comptroller general of the
94 State of South Carolina, and who is a citizen of the State of South Carolina; William Gurney, a citizen of South Carolina, and county treasurer of Charleston county, in the said State; J. P. Southern, G. W. Williams, and J. P. Low, assignees in bankruptcy of the Blue Ridge Railroad Company, and all of whom are citizens of the State of South Carolina.

And thereupon your orator complains and says:

1. The Legislature of the State of South Carolina, by an act entitled "An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company by providing for the securing and destruction of the same," and which act, according to the constitution of the said State, became a law of the said State on the 2nd day of March, in the year of our Lord 1872, did, in the preamble to the said act, set forth and declare in these words: That whereas the State of South Carolina has, by and in pursuance of the provisions of an act approved the 15th day of September, 1868, entitled "An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina," endorsed a

guaranty of the faith and credit of the State on four millions of bonds issued by the Blue Ridge Railroad Company in South Carolina, the Tennessee River Railroad Company in North Carolina, the Knoxville and Charleston Railroad Company in Tennessee, and the Pendleton Railroad Company in South Carolina, for the purpose of aiding the speedy completion of said railroads, which bonds are liable for the debts of the said railroad companies; and whereas the present condition of the finances of the State and of the said companies is such as to make the further continuance of said bonds on the market inexpedient and inadvisable, and a serious injury and prejudice to the credit of the State; and whereas the existence of the said four millions of dollars of bonds so guaranteed creates a large liability upon the part of the State, which the treasurer may be required to meet at unforeseen and inopportune times; and whereas the liability of the State, on account of such guaranty, should be faithfully met and discharged: Therefore, in order to secure the recovery and destruction of the bonds and coupons of the said company, issued under and in pursuance of the provisions of the aforesaid act, now sold or pledged in the city of New York and elsewhere, and to relieve the State of all liabilities whatsoever by reason of its indorsement and guaranty of said bonds, it then
95 did proceed to enact and declare that "the State treasurer is hereby directed, with the consent, in writing, of the president of the Blue Ridge Railroad Company in South Carolina, to require the financial agent of the State in the city of New York immediately to deliver to the State treasurer all the bonds of the Blue Ridge Railroad Company endorsed and guaranteed by the State of South Carolina which are now in his possession or held by him as collateral security for advances made by the said financial agent, by the order of the financial board, to the Blue Ridge Railroad Company; and upon the delivery of the said bonds the treasurer is hereby required to cancel the same in the manner hereinafter directed; and the said Blue Ridge Railroad Company shall thereupon be discharged from all liability to the State on account of such advances."

In the next section of the said act it is provided that, upon the surrender by the said company to the State treasury of the balance of the said four millions of dollars of bonds issued by the said Blue Ridge Railroad Company, and guaranteed by the State, the State treasurer is hereby authorized and required to deliver to the president of the Blue Ridge Railroad Company in South Carolina treasury certificates of indebtedness (styled revenue bond scrip) to the amount of one million eight hundred thousand dollars, the said certificates to be issued in the manner hereinafter directed; and if the said company shall not be able to deliver all of said bonds at one time the treasurer is authorized and required to deliver to the said president such amounts of said treasury certificates as shall be proportioned to the amount of bonds so delivered.

The next section of the same act declares that the State treasurer is authorized and required to have printed, or engraved in steel, as soon as possible, treasury certificates of indebtedness, to be known and designated as revenue bond scrip of the State of South Carolina,

in such form as may be designated by the State treasurer and the president of the Blue Ridge Railroad Company in South Carolina, to the amount of one million eight hundred thousand dollars; which revenue bond scrip shall be signed by the State treasurer, and shall express that the sum mentioned therein is due by the State of South Carolina to the bearer thereof, and that the same will be re-
96 ceived in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

The next section of the same act, which is the fourth in order, declares "that the faith and funds of the State are hereby pledged for the ultimate redemption of said revenue bond scrip, and the county treasurers are hereby required to receive the same in payment of all taxes levied by the State, except in payment of special tax levied to pay interest on the public debt, and the State treasurer and all other public officers are hereby required to receive the same in payment of all dues to the State, and still further to provide for the redemption of said revenue bond scrip, an annual tax of three mills on the dollar, in addition to all other taxes on the assessed value of all taxable property in the State, is hereby levied, to be collected in the same manner and at the same time as may be provided by law for the levy and collection of the regular annual taxes of the State; and the State treasurer is hereby required to retire at the end of each year from their date one-fourth of the amount of the treasury scrip hereby authorized to be issued until all of it shall be retired, and to apply to such purpose exclusively the taxes hereby required to be levied."

The next section of the same act provides that if any such revenue bond scrip is received in the treasury for the payment of taxes, the treasurer be, and he is, authorized by the said act, to pay out such revenue bond scrip in satisfaction of any claim against the treasury, except for interest on the public debt.

The sixth section provides for the cancellation of the said bonds by the State treasurer upon the delivery to him of the said bonds.

Then the said act provides that when the whole number of said bonds shall have been delivered to the treasurer and cancelled the lien of the State on the estate, property, and funds of the said Blue Ridge Railroad property shall be from thenceforth forever discharged and released, and should the said company be unable from any cause to deliver all of said bonds, such lien shall be discharged and released to an extent which shall be proportional to the amount of such bonds actually delivered.

2. Your orator shows that in pursuance of the authority and requirements set forth in the third section of the said act the State treasurer did have such treasury certificates of indebtedness, known
and designated as revenue bond scrip, in such form and de-
97 nomination as was determined on by him and the president of the Blue Ridge Railroad Company in South Carolina, for the purpose mentioned in the said act, prepared by being printed or engraved, to the amount of one million eight hundred thousand lars, signed by the State treasurer, expressing on the face thereof all that was required by the said act, and particularly setting forth

that such certificates will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

3. That at the time when the said treasury certificates of indebtedness were signed by the State treasurer, to be applied and used for the purposes mentioned in the said act, and to redeem the bonds guaranteed by the State for the principal and interest, a large amount of the bonds of the Blue Ridge Railroad Company, endorsed and guaranteed by the State of South Carolina, had been sold, or were pledged for large sums of money borrowed by the said Blue Ridge Railroad Company, and for the repayment of which said bonds had been pledged to the lenders of such sums; that such bonds, with the guaranty of the State endorsed thereon, were frequently pledged in open market, in the city of New York, as collateral security for loans of money, and were also sold and disposed of in the same manner and according to law, which, in regard to such bonds, holds them negotiable, without protest or notice of any kind by the State or its officers that there was dispute or denial, or question of any kind, of the liability of the said State.

4. That at the time when the said act of the Legislature of the State of South Carolina was passed, to wit, on the 2d day of March, in the year of our Lord 1872, your orator was the *bona fide* owner and holder of $417,000 of bonds of the said Blue Ridge Railroad Company, on which bonds the guaranty of the State of South Carolina was duly endorsed, without notice, qualification, or condition; that such bonds he had purchased for value, and which bonds were in themselves perfect and complete contracts by the State for the payment of the principal and interest due and to become due thereon, and were further secured by the mortgage of the estate, property, and funds of the said Blue Ridge Railroad Company to the said State because of the said guaranty; that so far from the said State, or its officers or agents, giving notice of any denial of the liability of the State
98 because of its guaranty on the said bonds, all of the proceedings of the Legislature of the State of South Carolina were calculated to inspire unquestioning confidence in its good faith. That, as indicative of this, the Legislature of the said State, by an act approved the 15th September, 1868, entitled "An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina," in the first section of the said act authorized and made it the duty of the said comptroller general, without reference to any provisos or conditions in former acts, to endorse on the bonds of the said Blue Ridge Railroad Company that the faith and funds of the said State are pledged to the extent of one million of dollars for the punctual payment of principal and interest in aid of the said Blue Ridge Railroad Company; and in the second section of the same act it was further provided that "the faith and funds of the State of South Carolina be, and the same are hereby, pledged to secure the punctual payment of any contracts which shall be made by the Blue Ridge Railroad Company in South Carolina, from any person or persons, corporation or corporations, to an additional amount not exceeding three millions of dollars, either in the United States or

Europe; and when such contracts shall be made by bond or bonds, signed by the president of the said company, under its seal and countersigned by the secretary and treasurer thereof, it shall be the duty of the comptroller general of the State to indorse thereon that the faith and funds of the State of South Carolina are pledged to the faithful performance of the said contract or contracts as it respects the punctual payment both of the principal and interest according to the terms of said contract or contracts." To this was added a proviso "that the said bonds, or any part thereof, shall not be used unless upon the express condition that upon application to the Congress of the United States, or to private capitalists, the amount of three millions of dollars in currency, or so much as may be necessary, shall be furnished in exchange or upon the security of said bonds." And the Legislature of the said State subsequently thereto—that is to say, by an act passed the 6th March, 1871—did declare that the proviso hereinbefore just recited is and was thereby repealed; so publicly and in the most authoritative manner giving notice that all limitations upon the power of said Blue Ridge Railroad Company in regard to the sale or pledge of the said bonds were altogether removed.

99 5. That your orator, so possessed of the said bonds, and relying upon the faith of the said State and the act of the Legislature of the said State by which it had caused further notice to be given to all parties of the authority it had given to the State treasurer to redeem the bonds so guaranteed by it in and by the issue of such treasury certificates of indebtedness, called revenue bond scrip, and the purpose for which such authority had been given, when requested so to do, your orator did consent to give back to the State treasurer said bonds, and exchange for the said bonds to receive the treasury certificates of indebtedness, the issue of which was authorized by the said act, and did thus comply with the purpose of the State to redeem a large amount of the bonds on which the guaranty of the State was indorsed; and the bonds so redeemed did come into the hands of the treasurer, and were, as your orator is informed and believes, cancelled, and are now in the possession of the State treasurer, and thereby the obligation of the Blue Ridge Railroad Company by virtue of the said bond and the guaranty of the said State because of its indorsement on the said bonds and the lien on the estates, property, and funds of the Blue Ridge Railroad Company are all discharged and forever released; and that this has been done and the purpose of the said act accomplished by your orator and others, also, who advanced the money by way of purchase of the said treasury certificates of indebtedness, with which the debts were paid for which the said bonds were pledged, and by redeeming the said bonds from such pledge and restoring the same to the treasurer provided for the securing and destruction of the said bonds and the release of the guaranty of the State.

6. That subsequent to the time when your orator, relying on the faith and credit of the said State, did, for the bonds so owned and held by him, surrender back the same for the said treasury certificates of indebtedness, and in so doing did cause the said bonds to be

redeemed, and so accomplishing the purpose of the said act, and after the bonds so redeemed by such treasury certificates of indebtedness were restored to the State treasurer, and so forever discharged the said State from all liability because of the endorsement of its guaranty on the said bonds, the Legislature of the said
State has by various enactments impaired the obligations
100 of its contract under the act of the 2nd March, 1872.
It has abolished the office of State auditor, & vested his powers & duties in the comptroller general. By an act approved 22 October, 1873, it repealed the 4th section of the act of 2nd March, 1872, of which the State auditor was directed to levy a tax of three mills for the redemption of the said treasury certificates of indebtedness or revenue bond scrip; & by an act approved 22 December, 1873, repealed all laws giving power to the comptroller general in relation to the levy of taxes, requiring the county treasurers to discharge that duty under the supervision of the comptroller general, but limiting the power of the county treasurers to the taxes levied by that act, & expressly forbidding the collection of any other taxes unless authorized by the Legislature. That the Legislature of the State has thus taken away the power to levy the said tax of three mills for the redemption of the said treasury certificates of indebtedness, as well as the authority of the county treasurers to receive the same in payment of taxes, except taxes to pay interest on the public debt, from all of its officers, in whom strict power was vested at the time when the said act of 2 March, 1872, became a law, and has in all things violated its contract with your orator, & rendered, so far as it could, the said treasury certificates of indebtedness or revenue bond scrip valueless in his hands.

7. Your orator shows that he is the *bona fide* holder and owner of the said treasury certificates of indebtedness to the amount of $166,000; that he became possessed of the same for bonds of the Blue Ridge Railroad Company, guaranteed by the State, which belonged to him *bona fide*, and for value, without the knowledge on his part of any objection on the part of the said State; that on the contrary, the act of the Legislature authorizing the issue of the said certificates of indebtedness by the said State treasurer, as also the purpose for which said issue was made, were publicly known. No notice of any purpose on the part of the State to repudiate its obligations under the said act was given or even suspected. That under the said act your orator, as a *bona fide* holder of such treasury certificates of indebtedness, was, and is, a party to a contract on the part of the State with him, as such holder, that such treasury certificates of indebtedness shall be receivable for taxes and dues to the State, except special taxes levied to pay interest on the public debt;
and that an annual tax of three mills on the dollar of all
101 taxable property of the State shall be levied and collected in the same manner as may be prescribed by law for the levy and collection of the regular annual taxes of the State, and that the State treasurer shall retire, at the end of each year from their date, the treasury scrip authorized to be issued, as directed by the said act.

8. Your orator, therefore, charges that the State of South Carolina, by & through the action of the Legislature in thus repealing the provisions of the act of the 2nd of March, 1872, by which rights were created & remedies for the enforcement thereof secured to *bona fide* holders of such treasury certificates of indebtedness or revenue bond scrip after the rights of your orator had become fixed under the said act as a contract to which your orator and the said State became, and were, and are parties, has violated the 10th section of the first article of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of a contract. That this provision of the Constitution has been declared by the Supreme Court of the United States to apply as well to the contracts to which a State is a party as to any other contracts; and that the repeal by the Legislature of the said State of the provisions of the said act of the 2 March, 1872, which gave certain rights & secured certain remedies to your orator, and the refusal of the comptroller general to direct the levy of the tax for the purpose of retiring such treasury certificates of indebtedness, and the refusal of the county treasurer to receive the said treasury certificates of indebtedness in payment of taxes and dues to the State, except special taxes levied to pay interest on the public debt, are all acts done by those officers of the State in violation of the obligation of the contract of the State with your orator, and which contract obliges the said comptroller general and the said county treasurer to do the several acts and things by the said act of the Legislature provided to be done by them in discharge of the obligations undertaken by the State, and which the State could not impair by repealing the act which creates the contract, or requiring those officers not to do those things which it had promised and contracted with your orator that they would severally do and perform.

Your orator further showeth that the Blue Ridge Railroad Company has recently been adjudicated a bankrupt; that J. P. Southern, G. W. Williams, and J. P. Low are the duly appointed assignees by the bankrupt court; that the said assignees, as he is advised, claim to have a certain interest in the subject-matter of these proceedings; and that they are proper parties to be before the court and to be heard in relation to such order or decree as may be herein made. 102

Your orator, therefore, now showeth unto your honors that he is remediless, except in this honorable court, where the matters and things of which he now complains are properly cognizable and relievable; that he understands, and so believes, that with the treasury certificates of indebtedness used in obtaining the said bonds from your orators, as well as with the moneys received from the sale or other disposition of other treasury certificates of indebtedness, the whole of the guaranteed bonds have been brought back to the State treasury, except about six hundred thousand dollars thereof, which are held or detained by the former financial agent of the State of South Carolina in New York, but upon what cause or pretext your orator does not know, but that, with the exception of six hundred thousand dollars, all of the four million of bonds guaranteed by the

State have been restored to the State of South Carolina, and that the obligation of the State under its contract, pursuant to the terms of the said act of the 2d March, 1872, is complete; and the purpose of the said State in protecting itself from liability for the whole amount of its guaranty has been completely accomplished.

And your orator further showeth that by reason of the repeal by the Legislature of the said State of the several provisions of the said act hereinbefore stated, and of the refusal by the comptroller general to levy the said tax specified in the said act for the retiring of the said treasury certificates of indebtedness, and also of the refusal of the county treasurers to receive the said treasury certificates of indebtedness for taxes and dues to the State, except taxes levied to pay interest on the public debt, the contract between the State of South Carolina and your orator has been broken, the obligations thereof impaired by such laws of the State, and the comptroller general and the county treasurers, whose duty it was and is under the said act to do and perform the several acts required of them under the said act, protected, because of such repeals, in refusing to do and perform their plain duty in the premises.

103 Your orator further showeth unto your honors that not only has the State of South Carolina, by the issue, exchange, or otherwise of these treasury certificates of indebtedness, or by the moneys obtained from the sale of them, became possessed of the bonds of the Blue Ridge Railroad Company, on which the guaranty of the State was indorsed, and thus completely destroys the guaranty and extinguished the liability of the State because of such guaranty, but that it has moreover become possessed of the bonds of the Blue Ridge Railroad Company on which the said guaranty was indorsed, and these too it has cancelled, and with the extinguishment of the guaranty has also extinguished the lien it had on the estate, property, and funds of the Blue Ridge Railroad Company.

And your orator further showeth that he, with others in like interest with himself, holders of the said treasury certificates of indebtedness, are well entitled to the aid of this court in declaring that the repeals by the Legislature of the State of the provisions of the said act hereinbefore stated are unconstitutional, null, and void; and that because of the contract created under the said act of the 2d March, 1872, between the State of South Carolina and the *bona fide* holders of such treasury certificates of indebtedness, the said comptroller general of the State should be required to levy the tax provided in the said act for the purpose for which it was intended, and the county treasurers of the said State required to receive the said treasury certificates of indebtedness for taxes and dues to the State, except the taxes levied to pay the interest on the public debt.

To the end, therefore, that the act of the Legislature of the State of South Carolina of the 2d March, 1872, may be decreed a contract, binding the State of South Carolina and affecting the said State with an obligation to do and perform, or cause to be done and performed, the several matters and things therein stipulated and set forth to be done and performed by the said State through its officers and agents, particularly so much of the said act as provides for the levy of a tax

to retire the said certificates of indebtedness, and to receive the same in payment of taxes and other dues to the State, except the tax to pay interest on the public debt; that the several parties holding or claiming to hold the said treasury certificates of indebtedness, *bona fide* and for value, may be called in and admitted to prove the same before a
104 proper person, to be appointed for that purpose; that the whole amount of such treasury certificates of indebtedness may be ascertained; that the repeal of the provisions of the said act of the 2nd March, 1872, by the Legislature may be declared unconstitutional, null, and void, because such repeal impairs the obligation of the contract between the State of South Carolina and your orator and all other parties who are *bona fide* holders of such treasury certificates of indebtedness; that, for the purpose of defending itself in such manner as it may be advised to be proper, the State may be allowed, upon the application of its attorney general in its behalf, to be made a party to these proceedings; that upon the ascertainment of the amount of treasury certificates of indebtedness, proper process may be decreed against the comptroller general to levy the tax provided for retiring the said treasury certificates of indebtedness; that the county treasurers of the said State be required to receive such treasury certificates of indebtedness as may be established as a claim under the contract created by the said act in tender of taxes and dues to the State, except interest on the public debt; that in cases where such tender is made the county treasurer refusing to receive the same shall be prevented by injunction from selling property or otherwise enforcing the payment of the said tax; that a mandatory injunction may be issued out of this honorable court requiring the comptroller general to cease from refusing to levy the tax for retiring the said treasury certificates of indebtedness, and the county treasurer to cease from refusing to receive the same for taxes and dues to the State, except to pay the interest on the public debt, and for such other and further relief as to your honors shall seem meet, may it please your honors to grant unto your orator not only your writ of injunction as prayed for, but also your writ of subpœna, directed to the said Solomon L. Hoge, comptroller general; William Gurney, county treasurer; J. P. Southern, G. W. Williams, & J. P. Low, assignees in bankruptcy of the Blue Ridge Railroad Company, requiring them, and each of them, at a certain day, and under a certain pain, therein to be limited, personally to be and appear in this honorable court, and then and there full, true, and direct and perfect answer make to all and singular the premises, and, further, to stand to, perform, and abide such
105 further order, direction, and decree as to your honors seem meet. And your orator will ever pray, &c.

MAGRATH,
Solicitor Amos Denison Williams.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this 28 day of May, 1874, before me personally came Amos D. Williams, who, being by me duly sworn, did depose and say that he had read the foregoing complaint & knew the contents thereof,

and that the same was true of his own knowledge, except as those matters stated on information and belief; that as to those matters he believes the same to be true.

AMOS DENISON WILLIAMS.

Suscribed & sworn to before me—

[SEAL.] EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

Subpœna.

UNITED STATES OF AMERICA.
Fourth Circuit, State of South Carolina:

The President of the United States of America to Solomon L. Hoge, comptroller general of the State of South Carolina; William Gurney, county treasurer of Charleston county; J. P. Southern, G. W. Williams, and J. P. Low, assignees in bankruptcy of the Blue Ridge Railroad Company, all citizens of the State of South Carolina:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the third day of August next ensuing, twenty days after the service thereof, then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Amos D. Williams, a citizen of the State of New York; and also that you do on the rules day next
106 immediately after the day appointed and expressed file, or cause to be filed, in the registry of said court your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the 10th day of July, in the year of our Lord one thousand eight hundred and seventy-four, and in the ninety-ninth year of the sovereignty and Independence of the United States of America.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S. for S. C.

MAGRATH,
Complainant's Solicitor.

The defendants will take notice that they are required to enter their appearance in this suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill will be taken *pro confesso.*

Returns of Marshal.

Entered civil docket, folio 56, July 16, 1874.

R. M. WALLACE, *U. S. M.*

Service of copy of subpœna accepted this 10 July, 1874.

WM. GURNEY,
Co. Treasurer Charleston County.

COLUMBIA, S. C., *July 14th*, 1874.

I certify that I have executed the within process by personal service of a copy thereof on Solomon L. Hoge, comptroller general S. C., on this 14th day of July, 1874.

T. H. BLACKWELL,
Dep't. U. S. Marshal.

Endorsement on Subpœna.

Service of this writ for James P. Low, John P. Southern, and Geo. W. Williams, assignees of the Blue Ridge R. R. Co. in So. Ca., bankrupt, is hereby accepted.
July 10th, 1874.

D. T. CORBIN,
Att'y for Assignees.

107 And on the 7th day of September, 1874, came into court the complainant, by his solicitor, A. G. Magrath, and filed the following order *pro confesso*, which order is in the words and tenor following:

Order Pro Confesso.

It appearing that the defendants, Solomon L. Hoge, comptroller gen'l; William Gurney, county treasurer of Charleston county; John P. Southern, James P. Low, and George W. Williams, assignees of Blue Ridge Railroad Company, having been duly served by process in this case, and having failed to answer, plead, or demur to the said bill of complaint—

Ordered that an order *pro confesso* be entered against the said defendants, Solomon L. Hoge, William Gurney, John P. Southern, James P. Low, & George W. Williams.

Given under my hand, this 7th day of September, 1874.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

And on the 7th day of September, 1874, came into court the plaintiff, by his attorney, A. G. Magrath, and filed the following order for publication, which order is in the words and tenor following:

Order for Publication.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In the Circuit Court. In Equity.

AMOS D. WILLIAMS, Plaintiff,
against
SOLOMON L. HOGE, Comptroller Gen'l of South Carolina, *et al.*, Defendants.

On motion of Mr. Magrath, for complainants, it is ordered that

an order for publication calling in parties and for other purposes, a copy of which is filed this day, shall be heard at the rule day next succeeding, which will be the first Monday of October next. A copy of the same, according to the 6th rule, entered in the order-book.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

108 And on the 5th day of October, 1874, came into court the complainant, by his solicitor, A. G. Magrath, and filed the following order of reference, which order is in the words and tenor following:

Order of Reference.

U. S. Circuit Court, Fourth Circuit, So. Ca. District.

A. D. WILLIAMS, a Citizen of the State of New York,

vs.

SOLOMON L. HOGE, a Citizen of the State of South Carolina, & others.

The bill in this case having been taken *pro confesso*, on motion of Mr. Magrath, solicitor for complainant, it is ordered that George D. Bryan, Esq., who is, for the purposes hereinafter set forth, appointed special master, be, & he is hereby, authorized & directed to cause public notice, by advertisement, to be made in one or more daily papers in the State of South Carolina & in the city of New York, notifying all persons holding treasury certificates of indebtedness issued under the act of the Legislature of the State of South Carolina of the 2nd March, 1872, to appear before him at such time and place as he shall designate in such notice, & then & there make proof before him of such treasury certificates of indebtedness of which such persons are the lawful holders; & that such persons so holding such treasury certificates of indebtedness may at the same time set forth & state at what time they became holders of such treasury certificates of indebtedness, & for & upon what consideration in money or otherwise such persons became holders thereof, & the person or persons from whom they obtained such treasury certificates of indebtedness. And the said special master is directed to make his report on these several matters with all proper expedition, with leave further to report any special matter that may be brought before him. It is further ordered that the said special master give notice to the attorney general of the State of the time & place when & where he will receive & take proof & other matters herein directed to be taken by him.

GEO. S. BRYAN,
5th October, 1874. *U. S. Judge, Dist. of So. Ca.*

109 And on the 15th day of December, 1874, came into court the defendants, John P. Southern, George W. Williams, & James P. Low, assignees Blue Ridge R. R. Co. in S. C., bankrupt, by their solicitor, D. T. Corbin, and filed the following order, limiting time to answer, which order is in the words and tenor following:

Order Limiting Time to Answer.

UNITED STATES OF AMERICA,
District of South Carolina:

November Term U. S. Circuit Court, 1874.

A. D. WILLIAMS
vs.
SOLOMON L. HOGE, Comptroller Gen'l of South Carolina, *et al.*

JOHN P. SOUTHERN, GEORGE W. WILLIAMS, & JAMES P. LOW, Assignees Blue Ridge R. R. Co. in S. C., Bankrupt.
vs.
SOLOMON L. HOGE, Comptroller Gen'l of South Carolina, *et al.*

The defendants in the above-entitled causes, all of them having been duly served and some of them having failed to answer, it is, on motion of D. T. Corbin, solicitor for complainants, ordered that those of the defendants who have not answered have till the first Monday in January, A. D. 1875, in which to answer; that notice of this order be given said defendants or their attorneys.

HUGH L. BOND, *Ct Judge.*

Dec. 15th, 1874.

And on the 4th day of January, 1875, came into court the defendants, Hoge & Gurney, by their solicitors, S. W. Melton & C. G. Memminger, and filed the following answer, which answer is in the words and tenor:

110 *Answer.*

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

A. D. WILLIAMS, a Citizen of the State of New York,
against
SOLOMON L. HOGE, Comptroller General of South Carolina; WILLIAM GURNEY, Treasurer of Charleston County, and others.

The joint and several answer of Solomon L. Hoge, comptroller general of the State of South Carolina, and William Gurney, county treasurer of Charleston county, in the said State, to the bill of complaint of A. D. Williams.

These defendants, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the manifold errors and insufficiencies to the complainant's said bill of complaint contained for answer thereunto, or to so much and such parts thereof as they are advised it is material for them to answer unto, answering, say:

That on September the fifteenth, one thousand eight hundred and sixty-eight, the General Assembly of South Carolina passed an act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina, whereby it was enacted in these words: "That when-

ever any contract or contracts may be made by the said company for borrowing money from any person, company, or corporation to any amount not exceeding one million of dollars, and when such contracts shall be made by bonds, signed by the president of the said company under its seal and countersigned by the secretary and treasurer thereof, it shall be the duty of the comptroller general to endorse thereon that the faith and funds of the State are pledged for the faithful performance of the said contracts, as respects the punctual payment both of the principal and interest, according to the terms of the said contracts: Provided, That so much of said issue as may be necessary, not exceeding three hundred thousand dollars, shall be applied to the redemption of the present bonded debt of the said company."

That by the second section of the said act it was further enacted that the faith and funds of the State of South Carolina are
111 pledged to secure the payment of any contract which shall be made by the Blue Ridge Railroad Company, in South Carolina, from any person or corporation to an additional amount not exceeding three millions of dollars; and when such contracts shall be made by bonds, signed by the president of the company under its seal, and countersigned by the secretary or treasurer thereof, it shall be the duty of the comptroller general of the State to endorse thereon that the faith and funds of the State of South Carolina are pledged to the faithful performance of the said contracts, as it respects the payment both of principal and interest according to the terms of the said contracts; and that upon such endorsement being made the whole property of the said company in South Carolina, North Carolina, Georgia, and Tennessee shall stand pledged and mortgaged to the State without any further act or deed of the company, for the faithful performance on the part of said company of such contracts, in priority and preference of any other debt which the said company may thereafter create or incur. And it was further in and by the said act enacted and declared to be an express condition that the said bonds, or any part thereof, shall not be used unless, upon application to the Congress of the United States, or to private capitalists, the amount of three millions of dollars in currency, or so much of that sum as may be necessary, shall be furnished in exchange or upon the security of the said bonds.

And these defendants expressly aver that this condition has never been repealed, and that, being clearly expressed upon the fact of the act which authorized the issue of the bonds, it conveyed to every person dealing with the said bonds express notice thereof, and bound them to see that the condition was fulfilled; and these defendants also aver that the said condition never has been performed, and that any use made of the said bonds in the manner set forth by the complainant is unauthorized and illegal. Defendants insist that the allegation of the complainant that such repeal is contained in the act of March 6, 1871, is wholly without legal foundation. The last-mentioned act is entitled "An act to promote the consolidation of the Greenville and Columbia Railroad Company, and the Blue Ridge Railroad Company," and all the sections of that act, among

which is the clause recited in the bill of complaint repealing the second section of the act of September the fifteenth, 1868, are
112 part and parcel of the details of the consolidation proposed by the said act, and all have relation to and are dependent upon such consolidation; and these defendants aver that the said companies never accepted the said act and never complied with its provisions, and that such intended consolidation has never taken place, nor have any measures been taken to that end; and these defendants submit that the allegation that this repeal is independent of the special purpose set forth in the title of the act would involve the General Assembly in the discredit of attempting to violate that portion of the State constitution which requires each act to disclose its purpose in its title, and that it shall be confined to one subject.

The defendants, therefore, deny the authority in any one to offer the said bonds for sale in the New York or any other market; and they also deny that the complainant can be deemed the *bona fide* owner of any of them.

And these defendants, further answering, admit that there is upon the statute book of South Carolina an act entitled "An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company by providing for the securing and destruction of the same;" but they insist that the said act is not only unconstitutional and void, but that it evidently must have been passed either by means of false pretences or of the suppression by the principal debtor, the Blue Ridge Railroad Company, of most important facts. It is apparent from the statements in the bill, and from other circumstances, that the Blue Ridge Railroad Company had never parted with the possession of the bonds, and therefore no debt had yet been incurred by the State. The Blue Ridge Railroad Company held their own bonds with the guaranty of the State on them, and were in the condition of a party seeking a loan on security and not able to effect it. No debt existed, and it was competent for the State at that stage to cancel her indorsement. It was therefore a false representation on the part of the Blue Ridge Railroad Company to affirm to the General Assembly that the State was a debtor, and the consideration alleged for the issue of the revenue bond scrip was pretentious and entirely failed.

These defendants do not admit that any value was paid by the complainant or any holder thereof for either the bonds of the Blue Ridge Railroad Company or any of the revenue bond scrip issued under the act of March, 1872. On the contrary, these
113 defendants have been informed, and so aver the fact to be, that whereas the acts of the General Assembly were passed with the intention of promoting work on the Blue Ridge railroad, no work of any kind has been done on said road, nor has it advanced one foot since the passage of the said acts.

The defendants, further answering, say that the said act of March 2nd, 1872, is unconstitutional, in being repugnant to the Constitution of the United States, and also to that of South Carolina; but they also say that in a case duly made between the State of South Carolina, at the relation of E. F. Gary, against the several county

treasurers of the State, and in which issue was joined in the circuit court of South Carolina for the county of Richland, it was adjudged that the said act was unconstitutional and void, and the county treasurers and all other officers of the State were enjoined from collecting the tax levied by the said act; and the State treasurer was enjoined from issuing any of the said scrip; and that upon an appeal duly taken to the supreme court of the State of South Carolina, the decree of the circuit court was affirmed and judgment entered on the 9th of June, 1873, which said judgment now stands in full force and virtue.

And these defendants aver that they have no interest, power, and authority in the premises; that the whole power over the subject rests in the State of South Carolina; that by the supreme authority of this State they have been enjoined from taking any action as prayed for by the complainant, and that they cannot but submit to that authority; that in fact the State of South Carolina is a necessary, principal, and real party to this suit, without whose presence no action can be taken by this court; and they pray that they may have the same benefit hereof as if they had formerly filed their demurrer.

These defendants, further answering, say that by the repeal of the several acts referred to in the bill, and by the abolition of the office of State auditor, there is no person authorized to levy or collect the tax claimed in the bill; and the several treasurers are expressly forbidden, as well by the Legislature as by the mandate of the supreme court of the State, from levying or collecting such tax, or from receiving or paying out any of the said revenue bond scrip, and that this court has no jurisdiction to enforce said payment, re-
114 ceipt, or collection; that the proper remedy is by petition to the General Assembly of the State, and that any jurisdiction over such matters is denied to the courts by the Constitution of the United States.

These defendants are merely officers of the State, and must respectfully defer to its control, and insist that they are in no default of which this honorable court can take notice. They therefore insist that no relief can be granted to the complainant in this suit, and ask to have the benefit of this objection to the relief prayed for in the bill of complaint.

And these defendants, denying all manner of unlawful combination and confederacy, without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

SAM. W. MELTON,
Sol. for Def'ts, Hoge & Gurney.

UNITED STATES OF AMERICA, *District of South Carolina:*

Solomon L. Hoge, comptroller general of the State of South Carolina, makes oath before me that the matters and things in the foregoing answer contained, so far as they are stated of his own knowledge, are true, and so far as they are stated on information, he believes them to be true.

S. L. HOGE,
Comptroller Gen'l South Carolina.

Sworn to and subscribed before me, this 1st day of January, A. D. 1875.

[L. S.] T. M. WILKES,
U. S. Commissioner for C. & D. Cts of U. S. for District of S. C.

And on the 27th day of February, 1874, came into — the complainant, A. D. Williams, by his solicitor, A. G. Magrath,
115 and filed the following replication, which said replication is in the words and tener following:

Replication.

UNITED STATES CIRCUIT COURT,
Fourth Circuit, South Carolina District:

A. D. WILLIAMS *v.* SOLOMON L. HOGE *et al.*

Replication of A. D. Williams to answer of Solomon L. Hodge *et al.*

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that there is any other matter or thing whatsoever in the said answers contained material or effectual in the law to be replied to, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

A. G. MAGRATH, *Sol'r.*

And on the seventh day of April, 1875, came into court the complainant, A. D. Williams, by his solicitor, A. G. Magrath, and obtained the following order to amend by adding party defendant, which order is in the words and tener following:

Order to Amend by Adding Party Defendant.

In the Circuit Court. In Equity.

A. D. WILLIAMS *v.* S. L. HOGE *et al.*

It being represented that S. L. Hoge, a party defendant,
116 since the filing of his answer as comptroller general has ceased to fill that office, & that T. C. Dunn is now the comptroller

general of the State of South Carolina, on motion of Mr. Magrath, solicitor for complainants, it is ordered that the bill be amended by making the *the* said Thomas C. Dunn, comptroller general of the said State, a party defendant.

GEO. S. BRYAN,
7th April, 1875. *U. S. Judge, Dist. of So. Ca.*

And on the 13th day of April, 1875, came into court Thomas C. Dunn, comptroller general of the State of South Carolina, and filed the following acceptance, which acceptance is in the words and tener following:

Acceptance.

UNITED STATES OF AMERICA,
District of South Carolina, 4th Circuit:

April Term Circuit Court, A. D. 1875. In Equity.

A. D. WILLIAMS, Complainant,

vs.

SOLOMON L. HOGE, Comptroller General for So. Ca., and others.

Having been made a party defendant, by order of court in the above-entitled cause, as the successor in office of Solomon L. Hoge, late comptroller general of South Carolina, I do hereby enter my appearance in said cause, and adopt as my own the ple-dings and acts in said cause of my predecessor in office, Hon. Solomon L. Hoge, late comptroller general of the State of South Carolina.

THOS. C. DUNN,
Comptroller Gen'l.

And on the 16th April, 1875, came into court Sam. W. Melton, attorney general, and filed the following letter of consent, which letter of consent is in the words and tener following:

117 *Letter of Consent.*

WILLIAMS *vs.* HOGE *et al.*

EXECUTIVE DEPARTMENT,
OFFICE OF THE ATTORNEY GENERAL,
COLUMBIA, S. C., 16 *Ap'l*, 1875.

HON. A. G. MAGRATH, *Charleston, S. C.*

DEAR SIR: In answer to your request, you have the consent of the attorneney general to amend the bill in this cause so that the prayer shall be for a mandatory injunction "requiring the comptroller general to '*cease from refusing to*'" levy the tax, &c., and "the county treasurer to '*cease from* from *refusing to*' receive the same," &c., thereby inserting the words which I here underscore.

Very respectfully, yours,

SAM. W. MELTON,
Att'y Gen'l.

And on the 16th day of April, 1875, came into court George D. Bryan, special master, and filed the following report; which report is in the words and tenor following:

Report.

United States Circuit Court, District of South Carolina, Fourth Circuit.

A. D. WILLIAMS, a Citizen of the State of New York,

vs.

SOLOMON L. HOGE, a Citizen of the State of South Carolina, and others.

To the judges of the circuit court in and for the circuit and district aforesaid:

The undersigned respectfully reports, this cause was referred to him by order of the circuit court of date the 5th day of October, A. D. 1874, for the following purposes, to wit: To cause public notice by advertisement to be made in one or more daily papers in
118 the State of South Carolina, and in the city of New York, notifying all persons holding certificates of indebtedness issued under the act of the legislature of the State of South Carolina of the 2d of March, 1872, to appear before him at such times and places as he shall designate in such notice, and make proof before him of such treasury certificates, from whom obtained, and upon what consideration, to report the same to this court, to notify the attorney general of all references held for the said purposes, and to report any special matter.

In obedience to the first direction contained in such order the undersigned caused the following notice to be published in the New York Journal of Commerce on the 12th, 19th, and 26th days of October, and on the 2nd and 9th days of November, 1874; in the Charleston Daily News and Courier on the 22nd and 30th days of October, and the 9th day of November, A. D. 1874, and in the Columbia Union Herald on the 23d and 30th days of October, and on the 9th day of November, A. D. 1874:

United States Circuit Court, South Carolina District, Fourth Circuit. In Equity.

A. D. WILLIAMS, a Citizen of the State of New York,

vs.

SOLOMON L. HOGE, a Citizen of the State of South Carolina, and others.

In obedience to the order made in this case, the undersigned, who has been appointed special master in this case, hereby gives notice to all persons holding treasury certificates of indebtedness, issued under the act of the Legislature of South Carolina, of the 2nd of March, 1872, that he will commence to hold references at his office, in the city of Charleston, No. 35 Broad street, on Wednesday, the 11th day of November, 1874, at 11 o'clock a. m., at which time and

place all persons holding such treasury certificates of indebtedness are notified to appear before him and there make proof such treasury certificate of indebtedness, of which they claim to be lawful holders, and the production of the treasury certificates of indebtedness will be required of the persons claiming to be lawful holders thereof. The persons so claiming and producing such treasury certificates of indebtedness shall at the same time and place
119 state at what time they became holders of such treasury certificates of indebtedness claimed and proved by them, for and upon what consideration in money or otherwise, they became holders thereof, and the person or persons from whom they obtained such treasury certificates of indebtedness.

In case of the inability of any person holding such treasury certificates of indebtedness to appear at the time and place mentioned, application may be made to the undersigned for another time at which the proof and other matters required of holders may be made.

(Signed) G. D. BRYAN,
Special Master.

and notified the attorney-general of the time and place of said meeting, and of the references afterwards held.

That a reference was held on the day appointed and on other days thereafter, and the proof taken as required by said order.

It appears from the testimony taken before him that there have been three issues of the said treasury certificates of indebtedness, as follows:

1st. An issue made directly after the passage of the act as aforesaid, and known as the printed or original scrip.

2nd. An engraved scrip by the American Bank Note Co. of New York.

3rd. A scrip prepared in the city of Washington.

The whole of the 1st class of scrip was issued by the State treasurer, Niles G. Parker, less the *pro rata* amount necessary to redeem three or four thousand dollars of the bonds of the Blue Ridge Railroad Co. then in the hands of the trustees of the said Blue R'd. R'd Co., as was supposed.

Of the 2nd class, one million and five thousand dollars was issued in exchange for the same amount of original scrip, which was cancelled.

Of the 3d class, there was over two hundred thousand dollars issued by the State treasurer in exchange for original scrip, which was taken up.

The scrip ordered by the State treasurer to be engraved by the American Bank Note Co. was to take the place of the original printed scrip, but before the whole amount had been exchanged the said bank
note Co. was enjoined by an order of the court of common
120 pleas for the city and county of New York, at the suit of Anson Bangs, from issuing the residue of the scrip engraved by it, and which balance of seven hundred and ninety-five thousand dollars of scrip is still in the possession of the said American Bank Note Co. In consequence of this injunction the State treas-

urer ordered *ordered* the 3d class of scrip to be prepared in Washington, of which over two hundred thousand dollars has been issued, as above reported.

The then State treasurer, Niles G. Parker, testifies that he fully and faithfully complied with the law in the issue of the scrip, and had returned to him all the bonds of the Blue Ridge Railroad Co., guaranteed by the State, except the bonds, to the amount of six hundred thousand dollars, which were in the hands of the financial agent of the State, and that all of the said bonds, with the exception of three or four held by the trustees, were duly cancelled by him and left in the treasury of the State on his retirement from office.

The scrip proved before me is as follows:

1st. Original scrip of A. D. Williams in the sum of one hundred and sixty-five thousand dollars, which was received from the treasurer of the State of South Carolina, in the city of New York, in the early part of the year 1872, in exchange for four hundred and seventeen thousand dollars of the bonds of the Blue Ridge Railroad Co., guaranteed by the State of South Carolina, which he held and owned. The payment by the said State treasurer and surrender by him, the said A. D. Williams, was made in presence of the president of the Blue Ridge railroad.

2nd. Engraved scrip of the American Bank Note Co., of New York, proved by Edward B. Wesley, in the sum of nine hundred and ninety-four thousand eight hundred and seventy dollars, which he received from the American Bank Note Co. in exchange for the like sum of original scrip, and which original scrip he received from John J. Patterson, president of the Blue Ridge Railroad Co., as follows: 1st. The sum of nine hundred and seventy-five thousand dollars of original scrip, to secure him, the said Edward B. Wesley, for certain moneys advanced by him to relieve from hypothecation two million four hundred and eighty-five thousand dollars of the bonds of the said Blue Ridge Railroad Co., guaranteed by the State of South Carolina, and which bonds were delivered to the State treasurer to be cancelled, and were duly cancelled
121 by him. The moneys advanced by him, the said Wesley, for this purpose amounted at the time, to wit, the 27th March, 1872, to the sum of three hundred and twenty-six thousand nine hundred and twenty-five dollars, the original checks for which have been exhibited to the undersigned as special master.

2nd. The sum of thirty thousand dollars of original scrip to secure him, the said Wesley, for an advance of eighteen thousand dollars to the said Blue Ridge Railroad Co., to enable it to retire certain of its bonds guaranteed by the State of Tennessee. The whole amount received by Mr. E. B. Wesley was one million and five thousand dollars in original scrip, which he exchanged for a like amount of the engraved scrip of the American Bank Note Co. of New York, and the said original scrip was cancelled by the American Bank Note Co. of New York. He, the said E. B. Wesley, subsequently returned ten thousand dollars of the said latter scrip to the assignees of the Blue Ridge Railroad Co. in bankruptcy.

3rd. Original scrip in the sum of eighteen thousand dollars,

proved by J. Fisher as trustee of the Citizens' Savings Bank in bankruptcy, and held by him as collateral to secure a note of Thos. Steers to said bankrupt, of date the 29th July, 1872, in the sum of nine thousand two hundred and ninety-seven $\frac{35}{100}$ dollars.

4th. Original scrip in the sum of thirty-seven thousand dollars, proved by John B. Palmer, as president of the Central National Bank of Columbia, and held by him, as follows:

The sum of ten thousand as collateral to secure note of J. P. Southern, Jo M. McKay, and John D. Caldwell, of date the 5th of September, 1872, and lodged by them.

The sum of five thousand dollars as collateral to secure note of W. B. Gulick and others, of date 30th September, 1872, upon which there is due the sum of fifteen hundred dollars, which scrip was lodged by the said W. B. Gulick.

The sum of twenty-two thousand dollars as collateral to secure notes of Thomas Steers, of date 8th August, 1872, 29th July, 1872, and 3d August, 1872, in sums of nine thousand two hundred and ninety-seven $\frac{35}{100}$ dollars, one thousand three hundred and sixty-six $\frac{32}{100}$ dollars, and one thousand and sixty-four dollars, respectively; which said scrip was lodged by said Thomas Steers.

122 5th. Original scrip in the sum of three thousand dollars, proved by R. & W. C. Swaffield, of Columbia, So. Ca., received by them on the 4th day of December, 1872, from Thos. Steers, contractor, to secure his note for two thousand and seven $\frac{35}{100}$ dollars, for merchandise furnished by the said R. & W. C. Swaffield to hands employed on the Blue Ridge railroad.

6th. Original scrip in the sum of seventy thousand five hundred dollars, proved by J. P. Southern, of Columbia, So. Ca., which said sum he holds as follows: Ten thousand dollars as collateral to secure a loan of eighteen hundred dollars to Wm. H. Trescott soon after the scrip was issued, and received said scrip from him. The balance of the scrip (sixty thousand and five hundred dollars) was purchased at different times and from various persons, and he, the said J. P. Southern, is unable to state the exact price he paid for the same.

7th. Original scrip in the sum of one thousand dollars proved by Geo. W. Waterman, of Columbia, S. C., and bought by him in the latter part of the year 1872, from H. W. Purvis, for the sum of three hundred *hundred* dollars. Also four hundred and forty dollars of the Washington scrip, which he, the said Geo. W. Waterman, received in exchange for the like amount of original scrip, for which he paid J. C. Roach the sum of one hundred and thirty-two dollars in the latter part of the year 1872.

8th. Original scrip in the sum of five thousand four hundred dollars proved by W. B. Gulick, of Columbia, S. C., five thousand dollars, of which was purchased by him from Col. Jas. P. Low in in June, 1872, then chief engineer of the Blue Ridge railroad, for twelve hundred and fifty dollars. The balance of the scrip ($460.00) he bought about the same time and at about the same rate, but does not now remember the party from whom he purchased it.

9th. Original scrip in the sum of eleven thousand dollars, proved by C. D. Melton, ten thousand dollars of which he received from the Blue Ridge Railroad Co. in the month of April or May, 1872, for professional services. The balance ($1,000.00) was also paid him for professional services; three hundred dollars by Niles G. Parker, and seven hundred dollars by other parties whom he does not remember.

10th. Original scrip in the sum of one hundred dollars, and
123 Washington scrip in the sum of seventy-five dollars, proved by D. Gamberill, and purchased by him from John R. Cochran for one hundred and sixty-seven dollars in the early part of 1873, at Columbia, So. Ca.

11th. Original scrip in the sum of one hundred and thirty nine thousand dollars, and Washington scrip in the sum of fifty-two thousand seven hundred and sixty dollars, proved by J. L. Neagle, of Columbia, South Carolina, of which he purchased five thousand dollars in the month of March, 1872, of W. J. Whipper, for twenty-five hundred dollars; one hundred and five thousand dollars in the month of June, 1872, of Hon. J. J. Patterson, for thirty thousand dollars; eighty thousand dollars in the month of June or July, 1872, of Hon. Niles G. Parker, for twenty-five thousand dollars, and seventeen hundred and sixty dollars, of Hon. W. H. Trescott, for five hundred dollars; all of which, with the exception of that purchased from Hon. W. H. Trescott, was in the original scrip. He afterwards exchanged with Hon. N. G. Parker fifty-one thousand of the original scrip held by him, the said J. L. Neagle, for a like amount of Washington scrip. All the purchases were made in the city of Columbia, South Carolina.

12th. Original scrip in the sum of twenty thousand dollars, proved by John B. Palmer, as president of the Columbia, Augusta and Charlotte railroad, which scrip was purchased on the 3rd day of April, 1872, by Wm. Johnston, as president of said road, of John D. Caldwell, for the sum of fourteen thousand dollars, for the purpose of paying taxes on said railroad.

13th. American Bank Note Co. scrip in the sum of ten thousand dollars, proved by Col. James P. Low, as one of the assignees of the Blue Ridge Railroad Co., bankrupt; said scrip was surrendered to the said railroad by E. B. Wesley, of the city of New York.

14th. Original scrip in the sum of ten thousand and five hundred dollars, and Washington scrip in the sum of two hundred and twenty-five dollars, proved by F. S. Rodgers, of the city of Charleston, and held by him to secure a loan to one J. R. Cochran, of Anderson county, South Carolina.

15th. Original scrip in the sum of two thousand dollars, and Washington scrip in the sum of three thousand six hundred and sixty-five dollars, proved by C. H. Baldwin, of the city of
124 Charleston, and held by him as collateral security to secure a loan of about seven hundred dollars made to Mr. H. G. Worthington about the 10th day of May, 1873.

16th. Original scrip in the sum of two thousand dollars, proved by Niles G. Parker, for which he paid at the rate of seventy cents

on the dollar, and bought from different persons in the city of Columbia in the summer of 1872. He does not remember the names of the parties from whom he purchased.

17th. Original scrip in the sum of eighteen thousand two hundred dollars, proved by R. K. Scott, of the city of Columbia, whereof he obtained ten thousand dollars from Niles G. Parker, by paying for said Parker a note given by him to one Hardy Solomon for ten thousand dollars; of W. J. Whipper five thousand dollars, on a loan of two thousand five hundred dollars; and three thousand two hundred dollars of one H. H. Kimpton, in payment of a debt of two thousand two hundred and forty dollars owing by said H. H. Kimpton to the said R. K. Scott.

18th. Original scrip in the sum of nine hundred dollars, proved by C. J. Iredell, cashier of the Carolina National Bank of Columbia, which was received from Hon. T. J. Mackey to secure a note of Hon. T. J. Mackey to said bank the sum of five hundred dollars, of date the 27th day of April, 1872.

19th. Original scrip in the sum of twenty thousand dollars, proved by J. P. Southern, as the agent of C. P. Leslie. The said J. P. Southern is informed and believes that the said C. P. Leslie received said scrip of one Thos. Steers, contractor on the Blue Ridge railroad, in payment for a blooded horses, valued at six thousand dollars.

The total amount of scrip proved before the special master is one million five hundred and eighty-five thousand six hundred and thirty-five dollars, of which one million four thousand eight hundred and seventy dollars is in the scrip prepared by the American Bank Note Co. of New York, five hundred and twenty-three thousand six hundred dollars in the original printed issue, and fifty-seven thousand one hundred and sixty-five dollars in the Washington issue.

Appended to and made a part of this report are copies of the depositions taken, and also a schedule of the character and numbers of the scrip, with the names of the parties who have proved the same.

Respectfully submitted.

G. D. BRYAN,
Special Examiner.

April 14th, 1875.

125 And on the 14th day of May, 1875, came into court Solomon L. Hoge, comptroller general of the State of South Carolina, by his solicitors, C. G. Memminger and W. H. Brawley, and obtained the following order, which order is in the words and tener following:

Order Dismissing Bill.

In the Circuit Court. In Equity.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

A. D. WILLIAMS, Plaintiff,
against
SOLOMON HOGE, Comp. Gen'l; WM. GURNEY, Treasurer, and others, Defendants.

Upon the reading of this case, it appears to the court the bill has no equity and cannot be maintained; it is therefore ordered that it be dismissed with cost, without prejudice to the other questions raised on either side.

M. R. WAITE,
May 14, 1875. *Chief Justice.*

And on the 14th day of May, 1875, came into court the complainant, A. D. Williams, by his solicitor, A. G. Magrath, and filed the following order, which order is in the words and tener following:

Order for Appeal.

In the Circuit Court.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

A. D. WILLIAMS, Plaintiff,
against
SOLOMON L. HOGE, WILLIAM GURNEY; J. P. SOUTHERN, G. W. WILLIAMS, & J. P. LOW, Assignees, Defendants.

The complainant in the above case prays that an appeal be allow- from the decree therein made.

A. G. MAGRATH,
14 May, 1875. *For Complainant.*

126 And on the 14th day of May, 1875, came into court the complainant, A. D. Williams, by his solicitor, A. G. Magrath, and obtained the following allowance of appeal, which allowance and appeal is in the words and tenor following:

Allowance of Appeal.

Ordered, That an appeal be allowed as prayed for.

M. R. WAITE,
14 May, 1875. *Chief Justice.*

UNITED STATES OF AMERICA,
District of South Carolina:

CLERK'S OFFICE, U. S. CIRCUIT COURT.

I, J. E. Hagood, clerk of said circuit court of the United States for

South Carolina, do hereby certify that the accompanying one hundred and twenty-five pages of writing are a full and true copy of the record and proceedings in said circuit court in the case of Amos D. Williams, complainant, and Solomon L. Hoge, comptroller general of South Carolina, respondents, now on appeal from the circuit court to the Supreme Court of the United States.

Given under my hand and seal of said court, at clerk's office in the city of Charleston, this 2nd day of September, A. D. 1875.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S., Dist. of S. C.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In Circuit Court. In Equity.

AMOS D. WILLIAMS, Complainant,

vs.

SOLOMON L. HOGE, Comptroller General of South Carolina; WILLIAM GURNEY, County Treasurer of Charleston County; JOHN P. SOUTHERN, GEORGE W. WILLIAMS, and JAMES P. LOW, Assignees of the Blue Ridge Railroad Company, Defendants.

"Know all men by these presents that we, Amos D. Wil-
127 liams, Edward B. Wesley, of the city and State of New York, and L. D. Childs, of the State of South Carolina, are held and firmly bound unto Solomon L. Hoge, comptroller general; William Gurney, county treasurer; John P. Southern, George W. Williams, and James P. Lowe, assignees, in the sum of two hundred dollars, to be paid to the said Solomon L. Hoge, comptroller general; William Gurney, county treasurer; John P. Southern, George W. Williams, and James P. Low, assignees, their certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this the thirtieth day of July, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas lately, at a circuit court of the United States, fourth circuit, district of South Carolina, holden at Charleston, in the said district, in a suit depending in said court between Amos D. Williams, complainant, and Solomon L. Hoge, comptroller general; William Gurney, county treasurer; John P. Southern, George W. Williams, and James P. Low, assignees, defendants, a decree was rendered against the said Amos D. Williams, complainant, and the said plaintiff having obtained an allowance of appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation, directed to the said Samuel L. Hoge, comptroller general; William Gurney, county treasurer; John P. Southern, George W. Williams, and James P. Low, assignees, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington city on the first Monday of December next:

Now, the condition of the above obligation is such that if the said Amos D. Williams shall prosecute the said appeal to effect, and answer all damages and costs if the said Amos D. Williams fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

A. D. WILLIAMS. [L. S.]
E. B. WESLEY. [L. S.]
L. D. CHILDS. [L. S.]

128 Signed, sealed, and delivered in presence of, as to Williams and Wesley—

[SEAL.] EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of N. Y.

[L. S.] JAS. T. WELLS,
Not. Pub. for So. Ca.

Personally appeared L. D. Childs, who, being duly sworn, doth acknowledge the above to be his act and deed.

Sworn to before me—

T. J. WELLS,
Not. Public for S. C.

Approved Oct. 15, 1875. M. R. WAITE,
Chief Justice, &c.

UNITED STATES OF AMERICA,
District of South Carolina:

CLERK'S OFFICE, U. S. DISTRICT COURT.

I, J. E. Hagood, clerk of said court, do hereby certify that the foregoing bond is a true copy of the original, now on file in my office, in the case of A. D. Williams *vs.* S. L. Hoge *et al.*

Given under my hand & seal of said court, at clerk's office in the city of Charleston, this 23rd day of September, A. D. 1875.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

(Indorsment on cover:) No. 228. Amos D. Williams, appellant, *vs.* Thomas C. Dunn, comptroller general of South Carolina; Wm. Gurney, county treas'r of Charleston county, *et al.* S. Carolina C. C. C. S. Filed 16th October, 1875.

129 *Trial of Cause.*

And at the April term, 1881, of the said circuit court, these two causes, John P. Southern and James P. Low, assignees of the Blue Ridge Railroad Company in South Carolina, bankrupts, complainants, against Johnson Hagood, comptroller general of the State of South Carolina; R. S. Porcher, county treasurer of Oconee county, in the said State, and Samuel E. Moore, county treasurer of Anderson county, in the said State, defendants, and the case of Amos D. Williams, complainant, against Johnson Hagood, comptroller general of the State of South Carolina; S. L. Leaphart, treasurer of the said State; P. C. Gaillard, county treasurer of Charleston county;

William H. Gibbes, county treasurer of Richland county; H. F. Alexander, county treasurer of Oconee county; William McGukin, county treasurer of Anderson county; John P. Southern and James P. Low, assignees in bankrupty of the Blue Ridge Railroad Company, defendants, came up for hearing on bill, answers, and
130 the pleadings, together with the testimony taken in the two cases. Argument by Mr. McMahon and Rion, on behalf of the complainants, and Mr. Youmans was to submit his argument (printed) to the court within sixty days, and complainants in reply to his argument within thirty days thereafter to the court. Mr. Edward B. Wesley, of New York, was also present at the trial, and brought into the court his revenue bond scrip, as well as the complainant, A. D. Williams, and submitted his rights to the court.

And on the 15th day of May, A. D. 1882, the following decree was filed, which decree is in the words and tenor following:

Decree.

131 At a circuit court of the United States held in and for the fourth circuit and district of South Carolina, at the city of Charleston, South Carolina, on the 9th day of April, 1881.

UNITED STATES OF AMERICA, *South Carolina District:*

In Equity.

JOHN P. SOUTHERN and JAMES P. LOW, Assignees of the Blue Ridge Railroad Company in South Carolina, Bankrupts, Complainants,

vs.

JOHNSON HAGOOD, Comptroller General of the State of South Carolina; R. S. PORCHER, County Treasurer of Oconee County, in the said State; and SAMUEL E. MOORE, County Treasurer of Anderson County, in the said State, Defendants.

AMOS D. WILLIAMS, Complainant,

vs.

JOHNSON HAGOOD, Comptroller General of the State of South Carolina; S. L. LEATHART, Treasurer of the said State; P. C.
132 GAILLARD, County Treasurer of Charleston County; WILLIAM H. GIBBES, County Treasurer of Richland County; H. F. ALEXANDER, County Treasurer of Oconee County; WILLIAM MCGUKIN, County Treasurer of Anderson County; JOHN P. SOUTHERN and JAMES P. LOW, Assignees in Bankruptcy of the Blue Ridge Railroad Company, Defendants.

These causes came on to be heard before the Honorable Hugh L. Bond, circuit judge in and for the fourth circuit, and the Honorable George S. Bryan, district judge in and for the district of South Carolina, both holding a circuit court in the city of Charleston in said circuit and district; and having been fully heard on the pleadings and proofs, a brief of which was duly filed with the clerk of this court at the time of said hearing; and after hearing Dennis McMahon, Esq., James H. Rion, Esq., and Thomas S. Cavender, Esq.,

of counsel for the complainant, and Edward B. Wesley, Esq., of New York, having appeared in open court, and consented to be a
133 party complainant with said Amos D. Williams, and having produced and exhibited to the court the revenue bond scrip referred to in the pleadings in this action, to wit, $1,005,000; and the complainant, Amos D. Williams, having produced the revenue bond scrip inh is possession, to wit, $165,000, ready then and there to be dealt with as this court should direct; and after hearing honorable LeRoy F. Youmans, attorney general of the State of South Carolina, and C. G. Memminger, Esq., associate counsel with the attorney general, in opposition; and due deliberation being had in the premises, the said court doth find the following facts and conclusions of law, to wit:

As Matter of Fact.

I. That the Legislature of the State of South Carolina, on the 2d day of March, 1872, passed in due form an act in which, among other things, after reciting that the State of South Carolina had, before that time, endorsed their guaranty of four million dollars of bonds of the Blue Ridge Railroad Company, that many
134 of said bonds were under pledge in Wall street in the city of New York, and that said State might be called upon at inopportune times to pay the same, the said Legislature did provide that the State treasurer of South Carolina should devise the form of a certificate to be issued, to be styled revenue bond scrip, which scrip would entitle the holder to have the same received in payment of taxes levied by the State, except the special tax levied to pay interest on the public debt. The said act did further provide that the said State treasurer should issue of said scrip not more than one million and eight hundred thousand dollars in all, and the said scrip should only be issued in proportion to the amount of bonds of said issue redeemed and returned to the said State treasurer for cancellation.

II. That under and pursuant to said act the said State treasurer did devise the form of and did issue said scrip, and in company with the president of the Blue Ridge Railroad Company, in the latter part of March, 1872, came to the city of New York, and
135 saw Edward B. Wesley, Esq., a banker in Wall street, and Amos D. Williams, Esq., the complainant herein, a member of the stock exchange, the latter of whom had before that time purchased in open market in Wall street four hundred and seventeen thousand dollars of said bonds guaranteed by the State, the former of whom owned none of said bonds.

III. That relying upon the faith of the provisions of said act of 2d March, 1872, and on the representations of the State treasurer of South Carolina, and of the president of the Blue Ridge Railroad Company, the complainant, Amos D. Williams, was induced to surrender four hundred and seventeen thousand dollars of said bonds of the Blue Ridge Railroad Company, and to take in payment therefor one hundred and sixty-five thousand dollars of said revenue bond scrip; and said Edward B. Wesley was also in-

duced by said representations of said State treasurer, and of said president of the Blue Ridge Railroad Company to advance in cash, in the city of New York, three hundred and forty-four thousand and nine hundred and twenty-five dollars, in the latter part
136 of March, 1872, and he received as security for such advances revenue bond scrip to the amount of one million and five thousand dollars. That with the money thus advanced the president of the Blue Ridge Railroad Company was enabled to redeem two million and nine hundred and two thousand dollars of bonds of the Blue Ridge Railroad Company, then lying under pledge in Wall street, in the city of New York, having the guaranty of the State of South Carolina thereon; and this redemption enabled the said president of the Blue Ridge Railroad Company to carry out to that extent the provisions of the act of 2d March, 1872; and thereby the complainant, Amos D. Williams, was constituted a *bona fide* holder of one hundred and sixty-five thousand dollars of said revenue bond scrip, and the said Blue Ridge Railroad Company were constituted *bona fide* holders of one million five thousand dollars of said revenue bond scrip, subject to the lien of said Edward B. Wesley for the sum of three hundred and forty-four
137 thousand and nine hundred and twenty-five dollars, with interest thereon from March, 1872, upon the payment of which sum and the discharge of which lien the equity in said revenue bond scrip is in the assignees in bankruptcy of said Blue Ridge Railroad Company.

IV. That on the faith of said revenue bond scrip, in addition to the surrender and cancellation of the aforesaid amount of bonds, the Blue Ridge Railroad Company procured to be surrendered to the aforesaid State treasurer the remainder of said four million dollars of bonds, with the exception of about four thousand dollars.

V. That on the 22d day of October, 1873, the Legislature of the State of South Carolina passed an act, wherein and whereby they repealed the fourth section of the act of March, 1872; and wherein and whereby they expressly forbade the comptroller general of said State of South Carolina to levy the tax for the redemption of said revenue bond scrip.

VI. That on the 22d day of December, 1873, the Legislature
138 of said State of South Carolina passed an act wherein they forbade any State or county officer to accept payment of taxes in said revenue bond scrip.

VII. That since the passage of said two acts the State officers of South Carolina have totally refused to levy the tax provided to be levied under and by provisions of the act of 2d March, 1872, and have also refused to take the necessary steps for such purpose, although due demand before the commencement of this suit has been made on such State officers, by and on behalf of the said complainant and the said Edward B. Wesley.

VIII. That since the passage of said two last mentioned acts the said State officers have refused to receive from the Blue Ridge Railroad Company, and from the assignees in bankruptcy of said cor-

poration the said revenue bond scrip in payment of the taxes, except special tax levied to pay interest on the public debt due the State by said corporation and said assignees in bankruptcy, although said revenue bond scrip has been duly tendered to said State officers in payment of said taxes by said Blue Ridge Railroad Company and said assignees in bankruptcy.

139 As Matter of Law.

I. That the act of the Legislature of the State of South Carolina, passed on the 2d day of March, 1872, was a lawful and constitutional act under the Constitution of the United States, and the revenue bond scrip therein directed to be issued by the State treasurer of South Carolina was issued by a lawful exercise of authority on the part of the said Legislature; and the revenue bond scrip is—so far as the present holders of said scrip, to wit, Edward B. Wesley and Amos D. Williams, and such other parties and corporations as appear by the proofs on file in this cause to have lawfully acquired the same are concerned—lawful and constitutional securities in the hands of the holders thereof, and are not bills of credit within the purview of the Constitution of the United States.

II. That the said act of 2d March, 1872, was a valid and binding contract between the State of South Carolina and the different owners and holders of said revenue bond scrip, and bound the State
140 of South Carolina, and the different State officers thereof, to do and perform the duties cast upon them by said act, to be performed in such manner as by the said statute is provided and directed.

III. That relying upon the faith of the provisions of said act of 2d March, 1872, and on the representations of the State treasurer of the State of South Carolina, and also of the president of the Blue Ridge Railroad Company, the complainant, Amos D. Williams, was induced to surrender four hundred and seventeen thousand dollars of bonds of the Blue Ridge Railroad Company, and to take in payment therefor one hundred and sixty-five thousand dollars of said revenue bond scrip; and said Edward B. Wesley was also induced by said representations to advance in cash in the city of New York, in the latter part of March, 1872, three hundred and forty-four thousand and nine hundred and twenty-five dollars, and he received as security for said advances revenue bond scrip to the amount of one million and five thousand dollars. That
141 with the money thus advanced the president of the Blue Ridge Railroad Company was enabled to redeem two million and nine hundred and two thousand dollars of bonds of the Blue Ridge Railroad Company then lying under pledge in Wall street, in the city of New York, having the guaranty of the State of South Carolina thereon. That this redemption enabled the president of the Blue Ridge Railroad Company to carry out to that extent the provisions of the act of 2d March, 1872. That thereby the said Amos D. Williams was constituted a *bona fide* holder of one hundred and sixty-five thousand dollars of said revenue bond scrip, and the Blue Ridge Railroad Company were constituted *bona fide*

holders of one million and five thousand dollars of said revenue bond scrip, subject to the lien of said Edward B. Wesley for the sum of three hundred and forty-four thousand and nine hundred and twenty-five dollars, with interest thereon from March, 1872, upon payment of which sum, and the discharge of which lien, the equitable ownership of said revenue bond scrip is in the assignees in bankruptcy of said Blue Ridge Railroad Company.

142 IV. That the act of the 22d October, 1873, of the Legislature of the State of South Carolina, wherein they repealed the fourth section of the act of 2d March, 1872, and wherein they expressly forbade the comptroller general of the State of South Carolina to levy the tax provided for the redemption of said revenue bond scrip, and also the provisions of the act of the Legislature of the State of South Carolina, passed December 22d, 1873, wherein said Legislature forbade any State or county officer to receive said revenue bond scrip in payment of such taxes as aforesaid, were each and every of them passed in violation of the contract entered into by and between the complainants and the State of South Carolina, and were and are respectively unconstitutional and void.

It is therefore ordered—

I. That it be referred to James E. Hagood, Esq., clerk of this court, as special master to take proof of the claims of all parties other than the said Amos D. Williams and Edward B. Wes-

143 ley (whose claims are hereby adjudged as established), holding, or claiming to hold, any of said revenue bond scrip, *bona fide*, and for value, who may, on contributing *pro rata* to the expense of such reference and this action, prove their claims. And that said special master do ascertain and report the total outstanding amount of such treasury certificates of indebtedness.

II. That for the purpose of defending itself the State of South Carolina may, at its option, and in such manner as it may be advised to be proper be allowed upon the application of the attorney general of said State on its behalf, to be made a party to these proceedings.

III. That upon the ascertainment of the amount of said treasury certificates of indebtedness outstanding proper process do issue out of and under the seal of this court against the State treasurer of the State of South Carolina for the time being, and his successors in office, compelling and requiring him and them to perform the duties enjoined upon the incumbent of that office by the fourth section of the act of 2d March, 1872, to wit,

144 to redeem the said treasury certificates of indebtedness; and compelling and requiring him and them to receive the same in payment of all taxes and other dues to the State, except the special tax levied to pay interest on the public debt; that proper process do issue out of and under the seal of this court against the comptroller general of the State of South Carolina for the time being, and his successors in office, compelling and requiring him and them to perform the duties enjoined upon that officer by the different sections of the act of 2d March, 1872, and compelling and requiring him from time to time to prepare and transmit to the several county

auditors all such forms and instructions as may be proper and lawful for levying and collecting in the same manner as the annual taxes the taxes required by the fourth section of the act of 2d March, 1874; and that proper process do issue out of and under the seal of this court compelling and requiring the different county treasurers of the State of South Carolina for the time being, and their
145 successors in office, to receive such treasury certificates of indebtedness in payment of all taxes due to the State of South Carolina, except the special tax levied to pay interest on the public debt. And in all cases where a tender of said treasury certificates of indebtedness is made and the same refused an injunction may issue restraining the county treasurer so refusing from selling property, or in any manner enforcing payment of said taxes.

IV. Any party to these suits may apply at the foot of this decree for further orders in the premises.

HUGH L. BOND,
May 15, 1882. *C't Judge.*

And on the 26th day of May, A. D. 1882, came into court the defendants, by their solicitor, LeRoy F. Youmans, attorney general of South Carolina, and obtained the following allowance of appeal: which allowance of appeal is in the words and tenor following:

Allowance of Appeal.

146 THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In the Circuit Court. In Equity.

AMOS D. WILLIAMS, Complainant,
against
JOHNSON HAGOOD, Comptroller General of the State of South Carolina; S. L. Leaphart, Treasurer of the said State; P. C. Gaillard, County Treasurer of Charleston County; W. H. Gibbes, County Treasurer of Richland County; H. F. Alexander, County Treasurer of Oconee County; William McGukin, County Treasurer of Anderson County; John P. Southern and James P. Low, Assignees in Bankruptcy of the Blue Ridge Railroad Company, Defendants.

The defendants, Johnson Hagood, comptroller general of the State of South Carolina; S. L. Leaphart, treasurer of the said State; P. C. Gaillard, county treasurer of Charleston county; W. H. Gibbes,
147 county treasurer of Richland county; H. F. Alexander, county treasurer of Oconee county; William McGukin, county treasurer of Anderson county, pray that an appeal be allowed to the Supreme Court of the United States from the decree by the said circuit court herein made.

May 22, 1882. LEROY F. YOUMANS,
Att'y Gen'l of So. Ca., for Def'ts., Appellants.

And the appeal is allowed. Bond to be given in the sum of one thousand dollars in the usual form with security to be approved by the judge of the dist. court.

HUGH L. BOND,
C't Judge.

Acceptance of Service.

We accept the service of the within allowance of appeal.
23d Sept., 1882.

D. McMAHON,
JAS. H. RION,
T. S. CAVENDER,
Compl'ts Sol's.
Per JAS. H. RION.

148 And on the 14th day of July, A. D. 1882, came into court the defendants by their solicitor, LeRoy F. Youmans, attorney-general of South Carolina, and filed the following appeal bond; which appeal bond is in the words and tenor following:

Appeal Bond.

THE UNITED STATES OF AMERICA,
Fourth Circuit. District of South Carolina:

In the Circuit Court. In Equity.

AMOS D. WILLIAMS, Complainant,
against
JOHNSON HAGOOD, Comptroller General of the State of South Carolina; S. L. Leaphart, Treasurer of the said State; P. C. Gaillard, County Treasurer of Charleston County; W. H. Gibbes, County Treasurer of Richland County; H. F. Alexander, County Treasurer of Oconee County; William McGukin, County Treasurer of Anderson County; John P. Southern and James P. Low,
149 Assignees in Bankruptcy of the Blue Ridge Railroad Company, Defendants.

Know all men by these presents, that we, John Peter Richardson, as State treasurer of South Carolina; John Bratton, as comptroller general of South Carolina; Colin M. Smith, John T. Sloan, Jr., are held and firmly bound unto Amos D. Williams, complainant, in the sum of one thousand dollars, to be paid to the said Amos D. Williams, his executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this tenth day of July, A. D. 1882.

Whereas the above-named defendants (John P. Southern and James P. Low, assignees in bankruptcy, excepted) have prosecuted an appeal to the Supreme Court of the United States to reverse the decree in the above-entitled action rendered by the circuit
150 court of the United States for the district of South Carolina in favor of the complainant:

Now, therefore, the condition of this obligation is such that if the above-named defendants (John P. Southern and James P. Low, assignees in bankruptcy, excepted) shall prosecute their said appeal to

effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

J. P. RICHARDSON, [L. S.]
State Treas.
JNO. BRATTON, *C. G.* [L. S.]
C. M. SMITH. [L. S.]
JOHN T. SLOAN, JR. [L. S.]

Sealed and delivered in presence of—
WM. K. BACKMAN.

THE STATE OF SOUTH CAROLINA, *Richland County:*

Personally appeared before me, W. K. Backman, notary public, C. M. Smith and John T. Sloan, Jr., who, on oath, say: That they are worth over and above their debts, liabilities, and homestead exemption, the first that he is worth over and above the aforesaid at least five thousand dollars, and the latter that he is worth
151 over and above the aforesaid at least twenty thousand dollars.

C. M. SMITH.
JOHN T. SLOAN, JR.

Sworn to before me, July 10th, 1882.
[SEAL.] WM. K. BACHMAN,
Notary Public.

Approval of Bond.

Approved: HUGH L. BOND, *Ct Judge.*

And on the 26th day of May, A. D. 1882, came into court the defendants, by their solicitor, LeRoy F. Youmans, attorney general of South Carolina, and obtained the following citation; which citation is in the words and tenor following:

Citation.

152 THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In the Circuit Court. In Equity.

By the Honorable Hugh L. Bond, one of the judges of the circuit court of the United States for the district of South Carolina, to Amos D. Williams, John P. Southern, and James P. Low, assignees in bankruptcy of the Blue Ridge Railroad Company:

Whereas Johnson Hagood, comptroller general of the State of South Carolina; S. E. Leaphart, treasurer of the said State; P. C. Gaillard, county treasurer of Charleston county; W. H. Gibbes, county treasurer of Richland county; H. F. Alexander, county treasurer of Oconee county; William McGukin, county treasurer of Anderson county, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of
153 the United States for the district of South Carolina, in a cause wherein you, Amos D. Williams, were complainant,

and you, John P. Southern, and James P. Low, assignees in bankruptcy of the Blue Ridge Railroad Company and the said above-named appellants were defendants; you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Charleston, in the district of South Carolina, in the fourth circuit, this 22d day of May, A. D. 1882.

HUGH L. BOND, *C't Judge.*

154 [Endorsed:] We accept the service of the within citation. 23d Sept., 1882. D. McMahon, Jas. H. Rion, T. S. Cavender, comp's sol's, per Jas. H. Rion. U. S. of America, 4th circ't, dis't of So. Ca. In the circ't court. In equity. A. D. Williams, compl't, *v.* Johnson Hagood, comp. gen'l, *et al.* Citation in appeal. Original. Filed May 26, 1882. J. E. Hagood, C. C. C. U. S., dist. S. C.

155 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In the Circuit Court.

I, J. E. Hagood, clerk of said court, do hereby certify that the foregoing is a true and correct copy of the records and proceedings in the case of Amos D. Williams, complainant, against Johnson Hagood, comptroller general of the State of South Carolina; S. L. Leaphart, treasurer of the said State; P. C. Gaillard, county treasurer of Charleston county; William H. Gibbs, county treasurer of Richland county; H. F. Alexander, county treasurer of Oconee county; William McGukin, county treasurer of Anderson county; John P. Southern and James P. Low, assignees in bankruptcy of the Blue Ridge Railroad Company, defendants, rendered as aforesaid, together with all things relating to the same, as appears by the records now on file in my office.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, S. C., this the 29th day of September, A. D. 1882.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: S. Carolina C. C. U. S. No. 381. Johnson Hagood, comptroller general of the State of South Carolina; S. L. Leaphart, treasurer of the State of South Carolina; P. C. Gaillard, county treasurer of Charleston county; W. H. Gibbes, county treasurer of Richland county; H. F. Alexander, county treasurer Oconee county; and William McGukin, county treasurer Anderson county, appellants, *vs.* Amos D. Williams. Filed 13th October, 1882.

OFFICE SUPREME COURT U. S.
FILED
NOV 29 1882
JAMES H. MCKENNEY, CLERK

117-52

U. S. Supreme Court.

JOHN P. SOUTHERN and JAMES P. LOW, Assignees of the BLUE RIDGE RAILROAD COMPANY,
Appellees,

vs.

JOHNSON HAGOOD, Comptroller of South Carolina, S. L. LEAPHEART, Treasurer of said State, and others, County Treasurers of divers counties in said State,
Appellants.

No. 1,068.

AMOS D. WILLIAMS and EDWARD B WESLEY,
Appellees,

vs.

SAME,
Appellants.

No. 1,069.

SIR: Please to take notice that on the annexed petition and on the transcripts of the records on file in the office of the Clerk of this Court at Washing-

ton, a motion will be made by the undersigned as attorney for the above appellees in each of the above entitled appeals before the Honorable The Supreme Court in open Court at the Capitol, in the City of Washington, D. C., on the 4th day of December, 1882, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 26, and the provisions of the Acts of Congress of June 30, 1870, that the Clerk of this Court be directed forthwith to print the transcripts of the records on appeal in each of the above-entitled appeals, and giving a preference in the argument of the same over civil causes between party and party, and that they be set down for argument together at an early nay during the present term of this Court ; or for such or further order in the premises as to the Court may seem just.

New York, November 15th, A. D. 1882.

Yours, &c.,

DENNIS McMAHON,
Attorney for above-named
Appellees in Nos. 1,068
and 1,069.

DENNIS McMAHON,
JAS. R. RION,
THOMAS S. CAVENDER,
Of Counsel.

LEROY F. YOUMANS,
Attorney General of
South Carolina,
Attorney for Appellants
in said causes.

U. S. SUPREME COURT. 9

JOHN P. SOUTHERN and JAMES P LOW, Assignees of the BLUE RIDGE RAILROAD COMPANY,
Appellees,

vs. No. 1,068.

JOHNSON HAGOOD, Comptroller of South Carolina, and others, State and County officers of said State,
Appellants. 10

AMOS D. WILLIAMS and EDWARD B. WESLEY,
Appellees,

vs. 11

No. 1,069.

JOHNSON HAGOOD, Comptroller, &c., and others, State and County officers of said State,
Appellants.

To the Honorable The Justices of the Supreme Court of the United States: 12

The petition of Dennis McMahon respectfully showeth :

First.—That he appears for the above-named appellees in each of the above entitled causes, which respectively appear on the Docket of this Court as numbers 1,068 and 1,069, and his appearance as

such attorney has been duly entered with the Clerk of this Court.

Second.—That as he is informed and verily believes the above entitled causes will not in all probablity be reached on the regular call of the docket in this Court for the next three years, unless advanced by order of this Court, to be heard at an earlier period.

Third.—That on behalf of the above named appellees and as their attorney and counsel, and with their authority, he prays that this Court would, in pursuance of Rule No. 26, and of the Act of Congress June 30, 1870,

16 Statutes at large 176, and
Revised Statutes, Sec. 949,

give a preference to the argument of the above entitled appeals over civil causes between private parties, and for that purpose order the Clerk of this Court to forthwith cause to be printed the transcripts of the record in said causes, and that this Court would also order the said causes to be assigned for a day certain to be argued together during the present term of this Court, and early therein, and your petitioner states the following facts and special and peculiar circumstances entitling these appellees to ask this Honorable Court for such rule:

1. The two appeals are respectively and substantially appeals involving construction of the same statutes and validity of the same scrip in which the State officers of South Carolina are respectively parties appellants, representing the interests and rights of said State and of certain counties therein. They are prosecuted by the Attorney Gen-

eral of South Carolina, who has special charge over the same.

2. They involve the constitutionality of the Act of the Legislature of the State of South Carolina, passed March 4, 1872, and of certain subsequent statutes of said Legislature, and also the validity and constitutionality of certain Revenue Bond Scrip, issued by said State under said Act of March 4, 1872, issued to the Blue Ridge Railroad Company, of which the assignees, Southern and Low, the appellees in No. 1,068, are representatives.

The said scrip to the amount of one million and five thousand dollars is now held by Edward B. Wesley, one of the complainants in the appeal No. 1,069, as security for sums advanced to the State of South Carolina, and to the President of the Blue Ridge Railroad Company, to enable them to comply with the purposes of said Act, and to carry out its behests, and one hundred and sixty-five thousand dollars of said scrip is held or owned by Amos D. Williams, the co-complainant in the appeal above entitled, and numbered 1,069 on the dockets of this Court.

The said scrip is not payable with interest, consequently the value of the equity of said scrip in the hands of said Wesley, viz: one million and five thousand dollars, held as security now for original advances and interest therein, now about six hundred thousand dollars, and belonging to the appellees in appeal No. 1,068, is daily diminishing, because the said scrip does not bear interest on its face, whereas the sum loaned for which that amount of scrip is pledged does bear interest.

That the scrip in the hands of or owned by said Williams does not bear interest on its face, and he loses thereby the employment of his capital locked

up in said scrip, viz: one hundred and sixty-five thousand dollars.

The bonds on appeal, given by the State officers on taking said appeal, are only in the penalty of one thousand dollars in each appeal, whereas the interest yearly accruing to Edward B. Wesley, the pledgee of said $1,005,000 of said scrip is about $24,500 per annum, and the loss of interest on the scrip, the equity of which is a part of the estate of the Blue Ridge Railroad Company in the hands of the assignees, the appellees in the appeal No. 1,068 and above entitled action, is over seventy thousand dollars per annum less the interest accruing to said Wesley.

The Blue Ridge Railroad Company are insolvent, and it is necessary that as much be saved of their assets involved in this suit as is possible, and by the said appeal the settlement of the bankrupt's estate is suspended.

The cases are appeals involving important constitutional questions relative to the validity of the Act of the Legislature of South Carolina of March 4, 1872, which is a revenue law, and of certain Acts of said Legislature repealing sections of the Act of March 4, 1872, and of the eighteen hundred thousand dollars of Revenue Bond Scrip, or near that amount, issued under said act of March 4, 1872, now in the hands principally of Edward B. Wesley and Amos D. Williams, complainants in the appeal No. 1,069, and in the hands of other *bona fide* holders, who are deprived of their lawful moneys by the illegal refusal of the State officers of South Carolina to comply with the directions of the act of March 4, 1872, a period now of over ten years.

4. The case involved in the appeal No. 1,068 was before this Court on a prior appeal in the October

Term of this Court, 1878, and a judgment of reversal was obtained of the then existing judgment of dismissal of the assignee's bill in equity; a new trial was granted, and from the judgment granted on said new trial in favor of said assignees, said appeal No. 1,068 is taken.- 25

5. The appeal No. 1,069 was taken from a judgment rendered by the Court below, in an action commenced by Amos D. Williams, on behalf of himself and others, in the U. S. Circuit Court of 4th Circuit; commenced in pursuance of leave reserved by this Court in giving their judgment on a prior appeal, argued in the October Term, 1878, at the same time with the original appeal in the case, No. 1,068 on the present docket. 26

In such cases on a second appeal to this Court the petitioner respectfully submits the cases ought to be advanced.

6th. By the said above entitled appeals No. 1,068 and 1,069, the operation of the Revenue Laws of South Carolina is stayed in this, to wit: that by the provisions of the act of the Legislature of March 4, 1872, it was provided that said scrip should be received by the State officers of South Carolina in payment of all taxes, except special tax to pay interest on their public debt; and by said act it was further provided that the State Treasurer should redeem said scrip one-quarter each year thereafter; and by said act it was further provided that a tax of three mills on the dollar should be annually levied to pay said scrip. Subsequently the Legislature of that State repealed those clauses, and ordered only gold and silver to be taken for such taxes, and forbade the tax to be levied as provided for in said act. The judgments appealed from decree that the repealing acts are unconstitutional; that said scrip is valid; and also 27 28

29 allow mandatory injunctions upon the State officers of South Carolina, holding said scrip to be constitutional and valid securities for the payment of taxes of South Carolina, excepting special tax to pay interest on the public debt, and compelling said State officers to receive the same, and further preventing them from refusing to comply with the provisions of said act of March 4, 1872, and preventing said State officers from selling property of owners who offer to pay their taxes in said scrip, 30 in conformity with the provisions of said act of March 4, 1872, and contrary to the provisions of the repealing acts, and enjoining them to levy the tax to redeem said scrip therein specially provided for.

That the judgments below appealed from were rendered in May, 1882. The causes on appeal were docketed in the present term, and by reason of the Supersedeases granted by the Court below on approval of the bonds given on the issuing of the ci- 31 tations on appeal, the execution of the decrees in favor of the appellees, and the operation of the Revenue laws under which the appellee's claims have been stayed until the hearing and determination of said appeals; without any provision of indemnity for accrued interest.

Wherefore, your petitioner prays that this Court would order the transcript of the record in each of the above causes to be forthwith printed by the Clerk of this Court, and that the said two appeals 32 have a preference over other civil causes between party and party on the present term calendar of this Court, and that the same be assigned for ar-

gument on an early day during the present term 33
of this Court, to be heard together.

DENNIS McMAHON.

D. McMAHON,
Attorney and of Counsel for said appellees.
THOMAS S. CAVENDER,
JAMES H. RION,
D. McMAHON,
Solicitors, Attorneys and Counsel in the Court below and in this Court.

34

Southern District of New York, ss.:

DENNIS McMAHON, of said District, being duly sworn, saith: that he has entered his appearance as attorney for the appellees in each of the above causes, and that the facts set forth in the foregoing petition are true, as he verily believes.

DENNIS McMAHON.

Sworn to before me this 8th day of November, 1882. 35

Jno. Thorn
Notary Public
Westchester Co.
Cert. filed in N.Y. Co

36

(L.S.)

SUPREME COURT U. S.
FILED
MAR 14 1884
H. McKENNEY, Clerk.

117-52

U. S. Supreme Court.

1

JOHN P. SOUTHERN and JAMES P. LOW, Assignees of BLUE RIDGE RAILROAD COMPANY, Appellees,

ats.

JOHNSON HAGOOD, Comptroller of South Carolina, SETH A. LEAPHART, Treasurer of said State, and others, County Treasurers of said State, Appellants.

No. 725. Oct. Term, 1883.

2

AMOS D. WILLIAMS and EDWARD B. WESLEY, Appellees,

ats.

SAME, Appellants.

No. 726. October Term, 1883.

3

APPELLANTS' POINTS AND AUTHORITIES IN OPPOSITION TO APPELLEES' MOTIONS TO ADVANCE CASES ON DOCKET.

I.

4

The same motions were made in these cases at October Term, 1882, and were denied.

MR. CHIEF JUSTICE WAITE delivered the opinion of the Court, as follows:

5 "These motions are denied. Cases that come here a second "time on appeal are not necessarily entitled to a preference over "others for hearing.

"The State opposes the motions, and no sufficient cause is shown "for advancing the cases because the execution of the revenue "laws of the State is stayed by the *supersedeas* which was se- "cured by the appeals. No matter of general public interest "seems to be involved; and so far as we can discover from the "showing made, no one is interested against the State in the "questions that are raised except the appellees. They occupy
6 "the position of parties seeking to collect debts alleged to be due "them from the State. The validity of these claims is contested. "To all intents and purposes the suits affect only private inter- "ests. The amounts involved are large, but not larger than in "many other cases."

"11th December, 1882."

II.

7 The parties making the motions to advance (the appellees) are not entitled to a hearing in preference to others under the provisions of Section 949 of Revised Statutes. The State of South Carolina is not a party to either of the suits, and the execution of the revenue laws has not been enjoined or stayed.

"The questions involved may be of public importance, but "that does not necessarily entitle the parties to a hearing in "preference to others. Practically every case advanced post- "pones another that has been on the docket three years awaiting
8 "its turn in regular call. Under these circumstances we deem "it our duty not to take up a case out of its order, except for "imperative reasons."

Poindexter *vs.* Greenhow, Treasurer; White *vs.* Greenhow; Carter *vs.* Greenhow, October 15, 1883.

III.

These motions do not come under the provisions of paragraph 4 of Rule 26 (adopted January 7, 1884): "Cases once adjudi-

cated by this Court upon the merits, and again brought up by writ of error or appeal, may be advanced by leave of the Court on motion of either party." 9

These cases have never been adjudicated by this Court upon the merits.

The case, No. 726, involves some of the same questions as were argued before this Court in the case of Williams *vs.* Hagood (October Term, 1878, 98 U. S., 72); in which case the appellee in this case was appellant.

MR. JUSTICE STRONG, in delivering the opinion of the Court in that case, after stating the Acts of the Legislature of South Carolina, approved October 22, and December 22, 1873, the construction of which is involved in this case, says: 10

"This legislation is manifestly inconsistent with the undertak-
"ing of the State expressed in the Act of March 2, 1872, and
"in the revenue bond-scrip issued thereunder; and its constitu-
"tionality and obligatory force would be a legitimate subject for
"consideration if the complainant had placed himself in a posi-
"tion to invoke our judgement. But he has not.

* * * * * * * 11

"Its object is plainly to obtain from this Court a declara-
"tion that the legislative Acts of October 22, and December 22,
"1873, are unconstitutional, because impairing the obligation of
"the contract made by the Act of 1872, and the certificate thereby
"authorized and thereunder issued, and this without any averment
"that the complainant will be injured by them. The question pre-
"sented to the Court is therefore merely an abstract one; such a
"one as no Court can be called upon to decide, and the bill shows
"no equity in the complainant. Hence it was properly dismissed
"in the Court below, and it must be dismissed here, but without 12
"prejudice to the complainant's right to bring and prosecute an-
"other suit, when he should be in a condition to exhibit any
"equity in himself."

The question of the constitutionality and obligatory force of the Acts of October 22 and December 22, 1873, is only subsidiary to the main question, whether the Act of March 2, 1872, is constitutional and valid.

The Supreme Court of South Carolina has decided that this

13 Act is unconstitutional, and that the scrip issued under it is null and void.

State *ex rel.* Shiver *vs.* Comptroller General, 4 S. C., 185.

This question has not been adjudicated by this Court.

IV.

The petitioners are not entitled under the decisions and prac-
14 tice of this Court to a hearing in preference to other civil causes between parties and parties.

CH. RICHARDSON MILES,
Attorney General of South Carolina.

Printed at the Presbyterian Publishing House, Columbia, S.C.

FILED
MAR 17 1884
A. McKINLEY, Clerk.

U. S. Supreme Court. 1

JOHN P. SOUTHERN and JAMES P. LOW, Assignees of BLUE RIDGE RAILROAD COMPANY,

als.

JOHNSON HAGOOD, Comptroller of South Carolina, SETH A. LEAPHART, Treasurer of said State, and others, County Treasurers of said State. 2

Appellants.

No. 725. Oct. Term 1883.

AMOS D. WILLIAMS and EDWARD B. WESLEY, 3

Appellees,

als.

SAME,

Appellants.

No. 726. October Term 1883.

Sir:

Please to take notice that on the annexed petition and on the transcripts of the records on file in the office of the Clerk of this Court at Washington 4

5 D. C. a motion will be made by the undersigned as attorney for the above named appellees, before the Hon. the Supreme Court, in open Court, at the Capital in the City of Washington, D. C. on the 17th day of March, 1884, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, pursuant to rule 26, lately amended by said Court, and the provisions of the Acts of Congress of June 7th, 1870, for an order.

That the Clerk of this Court be directed forth-
6 with to print the transcripts of the records on appeal in each of the above entitled appeals, and to advance the said causes on the present term calendar of said Court, and giving a preference in the argument of the same over civil causes between party and party, and that they be set down for argument at an early day during the present term of this Court after the day of said motion, or for such other or further order in the premises as to said Court may seem just.

7 New York, February 28, 1884.

Yours, &c.,

DENNIS McMAHON,
Attorney for the above named Appellees in each of said causes,

DENNIS McMAHON,
JAMES ~~K~~ RION,
THOMAS S. ~~KAVANAGH~~, Cavender
Of Counsel.

8 To THE ATTORNEY GENERAL OF SOUTH CAROLINA,
Attorney for the Appellants.

U. S. SUPREME COURT. 9

JOHN P. SOUTHERN and JAMES P. LOW, Assignees of the BLUE RIDGE RAILROAD COMPANY,
Appellees,

vs. No. 725.

JOHNSON HAGOOD, Comptroller of South Carolina, and others, State and County officers of said State,
Appellants. 10

AMOS D. WILLIAMS and EDWARD B. WESLEY,
Appellees,

vs. No. 726. 11

JOHNSON HAGOOD, Comptroller, &c., and others, State and County officers of said State,
Appellants.

To the Honorable The Justices of the Supreme Court of the United States: 12

The petition of Dennis McMahon respectfully showeth:

First.—That he appears for the above-named appellees in each of the above entitled causes, which now respectively appear on the Docket of this Court as numbers 1,725 and 1,726, and his appearance as such attorney has been duly entered with the Clerk of this Court.

13 *Second.*—That, as he is informed and verily believes, the above entitled causes will not in all probability be reached on the regular call of the docket in this Court for the next two or three years, unless advanced by the order of this Court, to be heard at an earlier period.

Third. That on behalf of the above-named appellees and as their attorney and counsel, and with their authority, he prays that this Court would, in
14 pursuance of Rule No. 26, as amended, and of the Act of Congress June 30, 1870,

16 Statutes at Large 176, and
Revised Statutes, Sec. 949,

give a preference to the argument of the above entitled appeals over civil causes between private parties, and for that purpose order the Clerk of this Court to forthwith cause to be printed the trans-
15 cripts of the record in said causes, and that this Court would also order the said causes to be assigned for a day certain to be argued together during the present term of this Court, and early thereafter, and your petitioner states the following facts and special and peculiar circumstances entitling these appellees to ask this Honorable Court for such rule:

1. The two appeals are respectively and sub-
16 stantially appeals involving construction of the same statutes and validity of the same scrip, in which the State officers of South Carolina are respectively parties appellants, representing the interests and rights of said State and of certain counties therein. They are prosecuted by the Attorney General of South Carolina, who has special charge over the same, and should be argued together.

2. They involve the constitutionality of the Act of the Legislature of the State of South Carolina, passed March 4, 1872, and of certain subsequent statutes of said Legislature, and also the validity and constitutionality of certain Revenue Bond Scrip, issued by said State under said act of March 4, 1872, issued to the Blue Ridge Railroad Company, of which the assignees, Southern and Low, the appellees in No. 725, are represented.

The said scrip to the amount of one million and five thousand dollars is now held by Edward B. Wesley, one of the complainants in the appeal No. 1,069, as security for sums advanced to the State of South Carolina, and to the President of the Blue Ridge Railroad Company, to enable them to comply with the purposes of said Act, and to carry out its behests, and one hundred and sixty-five thousand dollars of said scrip is held or owned by Amos D. Williams, the co-complainant in the appeal above entitled, and numbered 1,069 on the dockets of this Court.

The said scrip is not payable with interest, consequently the value of the equity of said scrip in the hands of said Wesley, viz: One million and five thousand dollars, held as security now for original advances and interest therein, now about six hundred thousand dollars, and belonging to the appellees in appeal No. 725, is daily diminishing, because the said scrip does not bear interest on its face, whereas the sum loaned for which that amount of scrip is pledged does bear interest.

That the scrip in the hands of or owned by said Williams does not bear interest on its face, and he loses thereby the employment of his capital locked up in said scrip, viz: One hundred and sixty-five thousand dollars.

21 The bonds on appeal, given by the State officers on taking said appeal, are only in the penalty of one thousand dollars in each appeal, whereas the interest yearly accruing to Edward B. Wesley, the pledgee of said $1,035,000 of said scrip is about $24,500 per annum, and the loss of interest on the scrip, the equity of which is a part of the estate of the Blue Ridge Railroad Company in the hands of the assignees, the appellees in the appeal No. 725 and above entitled action, is over seventy thousand
22 dollars per annum less the interest accruing to said Wesley.

The Blue Ridge Railroad Company are insolvent, and it is necessary that as much be saved of their assets involved in this suit as is possible, and by the said appeal the settlement of the bankrupt's estate is suspended.

The cases are appeals involving important constitutional questions relative to the validity of the Act of the Legislature of South Carolina of March 4,
23 1872, which is a revenue law, and of certain Acts of said Legislature repealing sections of the Act of March 4, 1872, and of the eighteen hundred thousand dollars of Revenue Bond Scrip, or near that amount, issued under said act of March 4, 1872, now in the hands principally of Edward B. Wesley and Amos D. Williams, complainants in the appeal No. 726, and in the hands of other *bona fide* holders, who are deprived of their lawful moneys by the illegal refusal of the State officers
24 of South Carolina to comply with the directions of the act of March 4, 1872, a period now of over ten years.

4. The case involved in the appeal No. 725 was before this Court on a prior appeal in the October Term of this Court, 1878, and a judgment of reversal was obtained of the then existing judgment of dis-

missal of the assignee's bill in equity; a new trial 25
was granted, and from the judgment granted on said new trial in favor of said assignees, said appeal No 725 is taken.

5. The appeal No. 726 was taken from a judgment rendered by the Court below, in an action commenced by Amos D. Williams, on behalf of himself and others, in the U. S. Circuit Court of 4th Circuit; commenced in pursuance of leave reserved by this Court in giving their judgment on a 26
prior appeal, argued in the October term, 1878, at the same time with the original appeal in the case No. 726 on the present docket.

In such cases on a second appeal to this Court the petitioner respectfully submits the cases ought to be advanced and argued together.

6th. By the said above entitled appeals Nos. 725 and 726, the operation of the Revenue Laws of South Carolina is stayed in this, to wit: that by 27
the provisions of the Act of the Legislature of March 4, 1872, it was provided that said scrip should be received by the State officers of South Carolina in payment of all taxes, except special tax to pay interest on the public debt; and by said Act it was further provided that the State Treasurer should redeem said scrip one-quarter each year thereafter; and by said Act it was further provided that a tax of three mills on the dollar should be annually levied to pay said scrip. Sub- 28
sequently the Legislature of that State repealed those clauses, and ordered only gold and silver to be taken for such taxes, and forbade the tax to be levied as provided for in said Act. The judgments appealed from decree that the repealing Acts are unconstitutional; that said scrip is valid; and also allow mandatory injunctions upon the State officers

of South Carolina, holding said scrip to be constitutional and valid securities for the payment of taxes of South Carolina, excepting special tax to pay interest on the public debt, and compelling said State officers to receive the same, and further preventing them from refusing to comply with the provisions of said act of March 4, 1872, and preventing said State officers from selling property of owners who offer to pay their taxes in said scrip, in conformity with the provisions of said Act of March 4, 1872, and contrary to the provisions of the repealing Acts, and enjoining them to levy the tax to redeem said scrip therein specially provided for.

That the judgments below appealed from were rendered in May, 1882. The causes on appeal were docketed in the Term of 1882, and by reason of the Supersedeases granted by the Court below on approval of the bonds given on the issuing of the citations on appeal, the execution of the decrees in favor of the appellees, and the operation of the Revenue laws under which the appellee's claims have been stayed until the hearing and determination of said appeals, without any provision of indemnity for accrued interest.

Wherefore, your petitioner prays that this Court would order the transcript of the record in each of the above causes to be forthwith printed by the Clerk of this Court, and that the said two appeals have a preference over other civil causes between party and party on the present term calendar of this Court, and that the same be advanced and be assigned for argument together on an early day thereafter during the present term of this Court, to be heard together.

DENNIS McMAHON.

D. McMAHON,
Attorney and Counsel for said
THOMAS S. CAVENDER,
JAMES H. RION,
D. McMAHON,
Solicitors, Attorneys and Coun
below and in this Court.

Southern District of New York, ss.
DENNIS McMAHON, of said Dist
sworn, saith: that he has entered a
attorney for the appellees in each of
and that the facts set forth in the f
are true, as he verily believes.

Sworn before me this 28th
day of February, 1884.

D. D. Kenny notar

State of New York
City & County of

being duly sworn saith

of South Carolina, holding said scrip to be constitutional and valid securities for the payment of taxes of South Carolina, excepting special tax to pay interest on the public debt, and compelling said State officers to receive the same, and further preventing them from refusing to comply with the provisions of said act of March 4, 1872, and preventing said State officers from selling property of owners who offer to pay their taxes in said scrip, in conformity with the provisions of said Act of March 4, 1872, and contrary to the provisions of the repealing Acts, and enjoining them to levy the tax to redeem said scrip therein specially provided for.

That the judgments below appealed from were rendered in May, 1882. The causes on appeal were docketed in the Term of 1882, and by reason of the Supersedeases granted by the Court below on approval of the bonds given on the issuing of the citations on appeal, the execution of the decrees in favor of the appellees, and the operation of the Revenue laws under which the appellee's claims have been stayed until the hearing and determination of said appeals, without any provision of indemnity for accrued interest.

Wherefore, your petitioner prays that this Court would order the transcript of the record in each of the above causes to be forthwith printed by the Clerk of this Court, and that the said two appeals have a preference over other civil causes between party and party on the present term calendar of this Court, and that the same be advanced and be assigned for argument together on an early day thereafter during the present term of this Court, to be heard together.

DENNIS McMAHON.

D. McMAHON,
Attorney and Counsel for said appellees.
THOMAS S. CAVENDER,
JAMES H. RION,
D. McMAHON,
Solicitors, Attorneys and Counsel in the Court below and in this Court.

Southern District of New York, ss.:

DENNIS McMAHON, of said District, being duly sworn, saith: that he has entered an appearance as attorney for the appellees in each of the above causes, and that the facts set forth in the foregoing petition are true, as he verily believes.

Sworn before me this 28th day of February, 1884.

Dennis McMahon

P.D. Kenny notary public (75) Rey. Co.

State of New York
City & County of New York ss.:

John J. Kenny

being duly sworn saith that on the first day of March 1884, at the City of New York, he served the foregoing petition & notice of motion on the Attorney General of South Carolina & depositing three copies thereof enclosed in a sealed post paid wrapper addressed & directed as follows, viz: "To the Attorney General of South Carolina, Columbia South Carolina," in the New York General Post Office, deponent further saith that there is a regular communication by mail between the City of New York & Columbia South Carolina aforesaid,

Sworn to before me this 1st day of March 1884.

J.J. Kenny

Robert O'Byrne, notary public

1752

U. S. Supreme Court.

JOHN P. SOUTHERN and JAMES P. Low, Assignees of the Blue Ridge Railroad Company,

Appellees,

at suit of

JOHNSON HAGOOD, Comptroller of South Carolina; S. L. LEAPHEART, Treasurer of said State, and others, County Treasurers of divers Counties in said State,

Appellants.

No. 725.

AMOS D. WILLIAMS and EDWARD B. WESLEY,

Appellees,

at suit of

SAME,

Appellants.

No. 726.

Points on application to advance these causes under rule 26, as amend-

ed and the Act of Congress of June 30, 1870, Revised Statutes of the U. S., Section 949.

Statement of facts appearing in the Transcripts of the Records.

On March 4, 1872, the Legislature of the State of South Carolina, desiring to relieve that State from its guaranty on four millions of bonds, issued for account of the Blue Ridge Railroad Company, and most of which had been planted in Wall street, the centre of finance of the Union, passed an Act (Laws of South Carolina, 14th vol., p. 79), wherein, after reciting the issuing of said bonds and their guaranty by the State, and that it was deemed expedient to retire the same, because under the then condition of the finances of the State the outstanding existence of those bonds created a large liability on the State, which its treasurer might be required to meet at an inopportune time, and in order to secure a return and cancellation of said bonds, then pledged in New York and elsewhere, provided for the issuing of Treasury Certificates of Indebtedness, styled Revenue Bond Scrip, to the amount not exceeding $1,800,000, to the President of the Blue Ridge Railroad Company, upon the latter procuring a return of such outstanding bonds, but no more of the scrip should be issued than was proportioned to the amount of the bonds delivered up.

The second and third sections of that Act devised the form of such certificates, and provided that the said scrip shall be received in payment of taxes and all other dues to that State, excepting special tax levied to pay interest on the public debt.

The fourth section of that act pledged the faith and funds of the State for the ultimate redemption of said Revenue Bond Scrip, and the different

County Treasurers were therein required to receive the same in payment of all taxes levied by the State, except Special Tax levied to pay interest on the Public Debt, and the State Treasurer and all other public officers of the State, are therein required to receive the same in payment of all dues to the State.

For the redemption of said scrip, an annual tax of three mills on the dollar was levied, collectable at the same time, and in the same manner as other taxes provided to be levied and collected by law.

The State Treasurer was also required to retire at the end of each year from their date one-fourth of the amount of said scrip until all shall be retired.

The said act contained other provisions of no moment to the present controversy.

Under this act the Treasurer of South Carolina got out and issued the Scrip, and on the faith of it, the State Treasurer and the President of the Blue Ridge Railway Company induced Mr. A. D. Williams, a member of the Stock Exchange in New York, who owned $417,000 of the Bonds of the Blue Ridge Railroad Co., guaranteed by the State, to surrender his bonds and to receive therefor $165,000 of the said Scrip, and also induced Edward B. Wesley, a private banker in New York, to advance $326,925 in cash, and to take up and surrender $2,485,000 of the bonds of the Blue Ridge Railroad Co., guaranteed by the State of South Carolina—for which he received as collateral from the President of the Blue Ridge Railroad Co., $975,000 of the Scrip—Mr. Wesley further advanced $18,000 and received $30,000 of Scrip, making in all that he held $1,005,000 of the Scrip as security for about $345,000 of cash advances.

These two individuals returned to the State $2,902,000 of the bonds of the Blue Ridge Railroad Co., guaranteed by the State, for which they held,

i.e., Mr. Williams $165,000 of the Scrip, and Mr. Wesley held $1,005,000 of the Scrip.

Other holders of the $4,000,000 of bonds guaranteed by the State surrendered their bonds and took scrip in payment therefor, so that nearly all of the $4,000,000 of guaranteed bonds were retired, leaving only a few thousand dollars not retired, and most of the revenue bond scrip was issued.

After the State got their guaranty retired, and after they had gotten Mr. Wesley's money, they repudiated the scrip and passed the act of October 22, 1873, repealing the 4th section of the act of March 4th, 1872, and expressly forbade the Comptroller to levy the tax providing for the redemption of the revenue bond scrip.

On the 22d December, 1873, they passed another act imposing a criminal penalty on State officers or county treasurers collecting the tax provided for in the act, and receiving anything for taxes excepting gold and silver.

The Supreme Court of South Carolina also decided in a litigation in which neither Wesley nor Williams were parties, that the scrip itself was invalid under the provisions of the Constitution of the United States.

> See Garey *v.* County Treasurer, 4 South Carolina Rep., p. 311.

The assignees of the Blue Ridge Railroad Company which, in the meantime, had gone into insolvency, brought a bill of equity to coerce the State officers to comply with the act of March 4th, 1872.

They, as owning the equity of the scrip, after satisfying the claims of E. B. Wesley, who made the advances aforesaid, A. D. Williams on behalf of himself, and of all others like situated holders of the scrip, brought a similar bill in equity.

These were heard before the United States Circuit

Court in Charleston, in 1874, and were dismissed for want of equity.

Appeals were taken to the Supreme Court of the United States, and therein decrees were made in the assignee's case reversing the same and ordering a new trial.

In the Williams case it was affirmed on the ground that Mr. Williams had not made the proper demand of the State officers with liberty to commence a new suit.

These decisions were made in October Term, 1878.

Upon such decisions the assignees of the Blue Ridge Railroad Company came down to a new trial at the United States Circuit Court at Charleston, in April Term, 1881.

Mr. Williams commenced a new suit, Mr. Wesley uniting with him.

Both of the cases were heard on pleadings and proofs in Charleston, in April, 1881.

In May, 1882, the U. S. Circuit Court of the 4th Circuit, Bond and Bryan Judges, gave a decree holding the revenue bond scrip to be available and valid security in the hands of E. B. Wesley and A. D. Williams. The Wesley scrip, after satisfying his advances, to be available scrip in the hands of the assignees of the Blue Ridge Railroad Company; also the scrip to be availible in the hands of other bona fide holders—they granted mandatory injunctions against the State officers.

Compelling the State Treasurer to perform the duties enjoined upon him by the 4th section of the Act of March 4, 1872, and to redeem the said treasury certificates; compelling him and the other proper State officers to receive the same in payment of all taxes and other dues of the State, excepting special tax levied to pay interest on the public debt; compelling the Comptroller-General to perform the duties enjoined upon that officer by

the different sections of the act of March 2, 1872; compelling him from time to time, to prepare and transmit to the several County Auditors all such forms and instructions as may be proper and lawful for levying and collecting in the same manner as other annual taxes—the taxes required by the 4th section of the act of March 2, 1872.

Enjoining the different County Treasurers to receive such certificates in payment of all taxes excepting special tax to pay interest on the public debt.

Where such scrip has been tendered in payment of taxes ordering injunctions to issue restraining the County Treasurers from selling the property or enforcing the payment of taxes.

These decrees were entered in the U. S. Circuit Court for the 4th Circuit on the 15th May, 1882.

From these decrees the State officers appealed to this Court, and procured supersedeases, on giving in each appeal a bond in $1,000 penalty.

The returns were made to this Court, and the cases are docketed on the present term calendar as Nos. 725 and 726.

MOTION IS NOW MADE TO ADVANCE THESE CAUSES ON THE PRESENT TERM CALENDAR OF THIS COURT, UNDER THE NEW RULE 26 AND THE ACTS OF CONGRESS.

Points.

I.—By the provisions of the act of June 30, 1870, (16 Stat., 176), Revised Stat. sec. 949, it is provided:

1. That when the State is a party, or

2. The execution of the Revenue Laws of a State is enjoined or stayed, *such State* or *the party claiming under the Revenue laws* of a state the execution whereof is enjoined or stayed, shall be

entitled, on *showing sufficient reason*,, to have the cause heard at any time after it is docketed in preference to any civil cause pending in such Court between private parties.

Under that clause of the Statutes and under the new rule 26 of this Court the present appellees claim to have their causes advanced and set down for argument together in the present term.

Under Rule 26, as amended 4th Subn. causes once adjudicated by this Court on the merits are to be advanced and set down for argument together on a particular day in term.

The day we ask them to be set down for is such day as will enable the Clerk to print and mail the transcripts of the records, and enable the parties to prepare their points for arguments—say about the 1st of April next.

II.—The State of South Carolina, though not a *party by name*, is in essence and spirit a *party in fact*, because—

1st. Its Comptroller General, its State Treasurer, several of its County Treasurers are parties.

2d. The appeals are prosecuted by its attorney General who has particular charge over the same,

3d. It affects the Treasury of the State, the construction and constitutionality of its scrip, and its Statutes.

4th. It affects the validity and constitutionality of its securities issued by it in payment of its debts.

A State can never be a party at the suit of private individuals, unless it voluntarily appears. It can only be made a party through its State Officers.

III.—The execution of the Revenue laws of the State of South Carolina is enjoined or stayed by the supersedeases below :

> The Act of South Carolina, of March 4, 1872, is a Revenue law, for it created the Scrip in question, ordered it to be issued in extinguishment of the State's Guarantee on the Blue Ridge Railroad bonds.
>
> Provided how such Scrip should be taken in payment of taxes except special tax to pay interest on the public debt ; provided the mode of Redemption. Provided as to levying taxes to pay the Scrip and the mode of levying same—contained other provisions of moment to the appellees.

Now this act of March 4, 1872, notwithstanding that the State passed subsequently repealing acts thereof, after Messrs. Williams and Wesley and other bona fide holders had surrendered their bonds and advanced their money on the faith of it, and caused the Blue Ridge Railroad bonds with the State Guaranty on them to be surrendered, and the scrip issued thereunder was declared to be valid and constitutional securities by the decree of the Court below appealed from. And by the said decree the State officers were put in motion to take the necessary steps to levy the tax provided for in it and to redeem it as therein provided for. All of which determine the act to be a revenue law of that State. The operation of which was decreed by the Court below in the decree appealed from. This decree is *stayed by the appeal* and the appeal bond and supersedeases granted thereon.

THE APPELLEES ARE PARTIES CLAIMING UNDER THAT REVENUE LAW OF SOUTH CAROLINA OF MARCH 4, 1872, THE OPERATION OF WHICH IS STAYED BY THE APPEAL.

IV.—The different acts of the Legislature of the State of South Carolina repealing the act of March 4, 1872, and depriving its State officers of the power to collect the taxes laid to redeem the scrip in question and providing other methods of collection, and forbidding its State and County officers to receive said scrip in the collection of their taxes under heavy penalties, were each and every of them revenue laws, the operation of which were sought to be enjoined or stayed by the suits of the appellees in the Court below. These suits have been favorably decided, and from the decrees so entered the appeals are taken, which, in effect, by staying the decrees below, enjoin and stay the appellees' two actions, which reinstated the Act of March 4, 1872, and enjoined the repealing acts.

The appellees are parties claiming under the act of March 4, 1872, *thus enjoined.*

V.—The reasons called for in Rule 26, to entitle the cases to be advanced and heard together, are:

1. These cases on appeal have in effect been before this Court before, on prior appeals heard and decided in October, 1878. One of them comes up on the appeal taken from the decree rendered on the new trial No. 725. The other one, 726, in effect comes within the spirit of the same rule.

> See statement in the petition on this motion.

The appellee in 725 on a second appeal where the settlement of a bankrupt railroad estate is stayed by the second appeal should have the case advanced.

2. None of the Scrip in question bears interest. Every day's delay tends to partially and pro tanto extinguish the equity of the Scrip vested in the as-

signees of the Blue Ridge Railroad, and held in pledge by E. B. Wesley. The sum advanced on the faith of the Scrip bears about $24,500 interest per annum. Ten years have already expired. Mr. Wesley's claim is now $600,000. In three years more it will be nearly $700,000, all of which is to the damage of the estate of the Blue Ridge Railroad in the hands of their assignee.

3. Mr. Williams has already lost the annual interest on his scrip, viz., $11,000 per annum for 10 years. Add 3 to 4 years more on that, and his entire loss of interest will be nearly $150,000.

4. The cases are of magnitude and involve important constitutional questions which ought to be settled now.

5. The only indemnity the appellees have is an appeal bond in the penalty of $1,000.

We, therefore, respectfully ask this Court to advance the causes—order them to be heard together on a day in April next.

DENNIS McMAHON,
Atty. and Counsel for Appellees.

JAMES H. RION,
of Wynnsboro, S. C.
THOMAS S. CAVENDER,
of Columbia, S. C.
DENNIS McMAHON,
of New York.
Attys., Solicitors and Counsel in the Court below.

117-52

Office Supreme Court U. S.
FILED.
NOV 9 1885
JAMES H. McKENNEY.
CLERK.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 108.

JOHNSON HAGOOD, COMPTROLLER-GENERAL OF THE STATE OF SOUTH CAROLINA, R. S. PORCHER, COUNTY TREASURER OF OCONEE COUNTY, AND SAMUEL E. MOORE, COUNTY TREASURER OF ANDERSON COUNTY, APPELLANTS,

vs.

JOHN P. SOUTHERN AND JAMES P. LOW, ASSIGNEES OF THE BLUE RIDGE RAILROAD COMPANY IN SOUTH CAROLINA, A BANKRUPT, APPELLEES.

1

No. 109.

JOHNSON HAGOOD, COMPTROLLER-GENERAL OF THE STATE OF SOUTH CAROLINA, S. L. LEAPHART, TREASURER OF THE STATE OF SOUTH CAROLINA, P. C. GAILLARD, COUNTY TREASURER OF CHARLESTON COUNTY, W. H. GIBBES, COUNTY TREASURER OF RICHLAND COUNTY, H. F. ALEXANDER, COUNTY TREASURER OF OCONEE COUNTY, WILLIAM McGUKIN, COUNTY TREASURER OF ANDERSON COUNTY, APPELLANTS,

vs.

AMOS D. WILLIAMS, APPELLEE.

2

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

BRIEF OF COUNSEL FOR APPELLANTS.

STATEMENT.

These two cases were tried together in the Circuit Court, and the same decree was filed in each case.

The first entitled case came before this Court at October Term, 1878, upon appeal of complainants from the decree of

3

the Circuit Court (C. J. Waite presiding), dismissing the bill on the ground that "the rights of complainants were concluded by the judgment in the State Court, to which Mr. Wesley was a party." (Record, p. 78, f. 110.)

This Court reversed the decree of the Circuit Court upon the sole ground that the evidence sent here failed to support the finding upon which the bill was dismissed, and the cause
4 was remanded to the Circuit Court for further hearing, with power to allow such amendments and further proof as may be necessary for the proper presentation of the questions to be decided. (Record, p. 1, f. 2.)

This appeal is taken by defendants from the Circuit Decree upon the amended bill in favor of complainants.

In the second entitled case, a previous bill of complaint of Williams was dismissed by the Circuit Court (C. J. Waite presiding) for want of equity. (Record, p. 88, f. 125.)

This Court, at October Term, 1878, confirmed the Circuit
5 Decree, and dismissed the bill, but without prejudice to the complainant's right to prosecute another suit, when he shall be in condition to exhibit any equity in himself. (Record, p. 53, f. 77.) (Case Reported, *Williams vs. Hagood*, 98 U. S. 72.)

This appeal is taken by defendants from the Circuit Decree, upon the new and amended bill in favor of complainant.

The complainants in both suits are holders of certain "Treas-
6 ury Certificates of Indebtedness of the State of South Carolina (styled Revenue Bond Scrip)," issued under "*An Act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company, by providing for the procuring and destruction of the same.*" 2 March, 1872: The relief sought is the establishment by the decree of the Court of the validity of the contract of the State, alleged to be created by said Act, and the enforcement of the things stipulated by said Act to be done, through orders directed to the officers of the State: the validity of said
7 contract having been denied by the State, and the Supreme Court of the State having declared the Act unconstitutional

and void, and having enjoined the State and County officers of the State from doing the things therein directed to be done.

Abstract of Pleadings.

BILLS OF COMPLAINT,

No. 108.

The bill of the complainants, Southern and Low, alleges 8
that they are assignees in bankruptcy of the Blue Ridge Railroad Company of South Carolina, and as such, holders and owners of $10,845.33 of the said Revenue Bond Scrip by absolute title, and of $994,870 thereof, by equitable title or right of redemption after paying Edward B. Wesley or his assigns, the sum of $326,925, which said Wesley advanced in March, 1872, to enable the said Blue Ridge Railroad Company to take up and surrender, under the Act of 2d March, 1872, $2,485,000 of the bonds of said Company guaranteed by the State of South Carolina; and also paying to said 9
Wesley $18,000 advanced by him to the said Company, to enable it to take up $30,000 of its bonds, guaranteed by the State of Tennessee; and after also paying certain bond creditors to the amount of $135,000, decreed to be paid out of the surplus of said $994,870 of said scrip in hands of Wesley.

The bill sets forth the following Acts of the General Assembly of South Carolina: (1) "*An Act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina*," passed 13th September, 1868, Section 1 of which authorized the guaranty by the State of contracts of said Company, not 10
exceeding $1.000,000, upon certain provisos therein contained, and Section 2 of which authorized the comptroller-general of the State to endorse the guaranty of the State upon the bonds of said company to an amount not exceeding $3,000,000, upon certain conditions and provisoes therein set forth; among others, "that the said bonds or any part thereof shall not be used unless upon the express condition that upon application to the Congress of the United States, or to private capitalists, the amount of $3,000,000 in currency, or so much of that sum as may be necessary, shall 11
be furnished in exchange, or upon the security of said bonds."

(2) "*An Act to promote the consolidation of the Greenville and Columbia Railroad Company and the Blue Ridge Railroad Company*," passed 6th March, 1871, by which, among other things, the condition and proviso in the Act of 1868, above cited, is repealed.

(3) "*An Act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge*
12 *Railroad Company, by providing for the securing and destruction of the same*," passed 2d March, 1872; Section 1 of which provides for the delivery to the State Treasurer of all the bonds of said Company, endorsed and guaranteed by the State of South Carolina, which were then in the possession of the financial agent of the State, and held by him as collateral security for advances to the said Company.

Section 2 provided that upon the surrender by the Company to the State Treasury of the balance of the said $4,000,000 of dollars of bonds thus guaranteed by the State,
13 the State Treasurer should be authorized and required to deliver to the President of the Railroad Company Treasury Certificates of Indebtedness (styled Revenue Bond Scrip) to the amount of $1,800,000, executed in the manner directed afterwards in the Act. The said scrip to be issued in proportion to the amount of said bonds delivered.

Section 3 made it the duty of the State Treasurer to carry out the purposes of the Act, to have printed or engraved on steel, Treasury Certificates of Indebtedness, to be known and designated as Revenue Bond Scrip, of the State of South
14 Carolina, in such form and of such denomination as may be determined on by the State Treasurer and the President of the Blue Ridge Railroad Company, to the amount of $1,800,000, which should be signed by the State Treasurer, and should express that the sum mentioned therein is due by the State of South Carolina to the bearer thereof, and that the same will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

Section 4 pledged the faith and funds of the State for the
15 ultimate redemption of the scrip, and required County Treasurers to receive it in payment of all taxes levied by the State,

except in payment of the special tax levied to pay interest on the public debt. It also required the State Treasurer, and all other public officers, to receive the same in payment of all dues to the State; and still further to provide for its redemption, an annual tax of three mills on the dollar, in addition to all other taxes on the assessed value of all taxable property in the State, is levied, to be collected in the same manner and at the same time as may be provided by law for the levy and 16
collection of the regular annual taxes of the State. And the State Treasurer is required to retire at the end of each year from their date, one-fourth of the Treasury scrip authorized to be issued, until all of it shall be retired, and to apply to such purpose exclusively, the taxes by the Act required to be levied.

Section 5 provides that if any such Revenue Bond Scrip is received in the Treasury for the payment of taxes, the Treasurer is thereby authorized to pay out such Revenue Bond Scrip in satisfaction of any claim against the Treasury, except 17
for interest on the public debt.

Section 6 required the guaranteed bonds to be cancelled and destroyed on their delivery to the Treasurer.

Section 9 makes it a penal offence, punishable by fine and imprisonment in the Penitentiary, to forge or counterfeit said treasury scrip.

(These several Acts are printed in full in Record, case No. 109, p. 55, f. 81, *et seq.*)

The complainants further allege that the said Blue Ridge Railroad Company did surrender to the State Treasurer nearly 18
all of the balance of the said $4,000,000 of bonds—which bonds, so surrendered, were cancelled and destroyed. That the State Treasurer thereupon delivered to the said Company Revenue Bond Scrip, duly executed in conformity with the Act of 2d March, 1872, in an amount proportioned to the amount of bonds so surrendered. That, to enable the said Company to redeem and surrender $2,485,000 of the said bonds, the said Blue Ridge Railroad Company borrowed of Edward B. Wesley, of New York, $326,925, and pledged with him, as security therefor, $975,000 of said Revenue Bond Scrip, and 19
also pledged a further sum of $30,000 of said scrip with said

Wesley, to secure the further sum of $18,000, for cash advances made by him to enable the said Company to take up and cancel certain other bonds of the said Company, guaranteed by the State of Tennessee. That complainants, as assignees, own the equity of redemption in said pledged Revenue Bond Scrip, after paying said Wesley, or his assigns, and after paying certain bond creditors, who have specific liens
20 thereon, to the amount of $135,000, after payment of the said Wesley's advances, and interest and expenses.

They claim that, by virtue of the said Revenue Bond Scrip, a valid contract subsists between the State of South Carolina and the holders thereof; for which the State received a valuable and adequate consideration in the surrender and extinguishment of the bonds endorsed by it; and that the State is, and its Comptroller-General and County Treasurers are, bound in law and good conscience to perform its contract, as set forth in the said Act of 2d March, 1872, and the said
21 Revenue Bond Scrip.

The bill charges that the said officers of the State, to whom application has been made, have, at various times and on various occasions, denied the validity of the said Revenue Bond Scrip, and of the Act by virtue of which the same was created: and that the Courts of the State have held that the said Act of 2d March, 1872, was invalid, because contrary to the provisions of the Constitution of the United States, in that it created bills of credit issued by the State of South Carolina.

22 That the State of South Carolina has not only neglected and refused to perform its said contract, but has passed several laws impairing the obligation thereof:

1. By an "*Act to abolish the office of State Auditor and to confer the duties of his office upon the Comptroller-General*," passed 13th March, 1872; it abolished the office of State Auditor, he being the officer to levy and collect the taxes for the redemption of said revenue bond scrip.

2. By an Act passed 22d October, 1873, Section four of the Act of 2d March, 1872, which provides for an annual tax of
23 three mills on the dollar, for the redemption of the Revenue Bond Scrip, is repealed; and the law which directed the

State Auditor annually to give notice to each County Auditor of the rates *per centum* authorized by law to be levied for State purposes, is also repealed; and the Comptroller-General is forbidden to levy any tax for any purposes whatever, unless expressly thereafter authorized so to do by Statute.

3. By the "*Act to raise supplies for the fiscal year, commencing November 1, 1873, and to alter and amend the law in relation to the collection of taxes*," passed 22d December, 24
1873, County Auditors and County Treasurers are required to proceed, under the supervision of the Comptroller-General, to the collection of the taxes therein levied, and they are forbidden to collect, or cause to be collected, any other tax whatsoever, unless thereafter expressly authorized so to do; the taxes therein levied not including the taxes for the redemption of said Revenue Bond Scrip. And any State or County officer, who shall offend against any of the provisions of said Act, shall be deemed guilty of a felony, punishable by fine of not less than $1,000 and not more than $50,000, and 25
by imprisonment in the State Penitentiary for not less than one or more than five years.

The complainants further allege that they tendered to the County Treasurers of Oconee and Anderson amounts of the said Revenue Bond Scrip equal to the State taxes assessed against the property of the said Blue Ridge Railroad Company, for the fiscal year 1872, in the respective Counties, but each and both of them refused to receive the same, or any part thereof.

The bill charges that the said actings and doings of the 26
State of South Carolina are in breach of its contract with the holders of the said Revenue Bond Scrip; that the Acts of the General Assembly, abolishing the office of Auditor, and repealing the provisions of the Act of 2d March, 1872, are laws impairing the obligation of a contract, and invalid and void, as in violation of the Constitution of the United States. That by reason of the actings and doings of the General Assembly and of these State officers the Revenue Bond Scrip has become depreciated in value, and, unless restrained, the said scrip pledged to the said Wesley will not be worth 27
the loans made upon the security thereof.

The prayer of the bill is that it may be declared that a valid contract exists between the complainants, as holders and owners of said Revenue Bond Scrip, and the State of South Carolina, whereby the latter is bound to perform the matters by the said Act of 2d March, 1872, promised by it to be done.

That the State, for the purpose of defending itself as it may be advised to be proper, may be allowed, on the application
28 in its behalf of the Attorney-General, to become a party to these proceedings.

That the repeal of the provisions of the Act of 2d March, 1872, may be declared to impair the obligation of said contract, and therefore to be unconstitutional and void.

That the Comptroller-General of South Carolina may be required, in pursuance of said Act, to levy a tax to satisfy the Revenue Bond Scrip, held and owned by complainants.

That the defendants, the County Treasurers, may be decreed to receive the said Revenue Bond Scrip in payment of
29 the said taxes due by complainants to the State.

That on their refusal to do so, they may be enjoined from enforcing the said taxes, by selling the property of complainants, or in any other manner, and that on such refusal the lien of the said taxes on the property may be declared to be discharged.

For general relief and for "a writ of injunction in the premises."

No. 109.

The bill of the complainant, Williams, alleges that he is the
30 *bona fide* holder and owner of $166,000 of the said Revenue Bond Scrip, which he received in exchange for $417,000 of the bonds of the Blue Ridge Railroad Company, guaranteed by the State; and is filed in behalf of himself and of all others holding and claiming in like behalf with himself, who will come in and prove their claims, and contribute to the expenses of the suit.

The bill sets forth the several Acts of the General Assembly of the State of South Carolina, which are mentioned in the bill in the preceding case.

31 The bill further alleges that after the adjudication of this Court, by which the previous bill and the appeal were dis-

missed for want of equity, but without prejudice to the right to prosecute another suit, to wit, in April, 1879, complainant presented the $166,000 of Revenue Bond Scrip, held by him, to the defendant, S. L. Leaphart, State Treasurer, and demanded payment of the same, pursuant to the provisions of the Act of 2d March, 1872, and that said State Treasurer refused to accept the tender of said scrip, and refused to pay the same or any part thereof. 32

That about the same time complainant notified the defendant, Johnson Hagood, Comptroller-General of the State of South Carolina, of the demand made by him upon the State Treasurer, and his refusal as aforesaid, and did request the said Comptroller-General to do all such things as were necessary to levy and collect the tax for the redemption of the said Revenue Bond Scrip, in accordance with the provisions of the said Act of 2d March, 1872, and that the said Comptroller-General refused to comply with the same.

That complainant is a banker and broker in the city of New 33
York, dealing in such securities as the bonds of the Blue Ridge Railroad Company, guaranteed by the State of South Carolina, and the Revenue Bond Scrip aforesaid, and that at the time he took the said Revenue Bond Scrip he was able to dispose of the same to parties desiring to use the same in payment of taxes levied by the State of South Carolina.

That for such purpose complainant lately disposed of a quantity of said scrip, at the rate of seventy per cent. of its face value, on a conditional sale that the said scrip could be so used in payment of said taxes; but that the different County 34
Treasurers of the different Counties of the State of South Carolina, among others the defendants, the County Treasurers of the Counties of Charleston, Oconee, Anderson, and Richland, have refused and do continually refuse to receive the said Revenue Bond Scrip in payment of taxes due to the State, whereby the said scrip has ceased to have any market value, and the property of complainant has thereby become very much diminished in value by reason of the said refusal of said County Treasurers and State Treasurer and Comptroller-General to perform the duties enjoined upon them by said 35
Act of 2d March, 1872.

The assignees in bankruptcy of the Blue Ridge Railroad Company (the complainants in the preceding case), are made defendants as claiming an interest in the subject matter of the suit. The other defendants are the then Comptroller-General of the State of South Carolina, the then State Treasurer (who is not made a party defendant in the preceding case), and the then County Treasurers of the Counties of Charleston,
36 Richland, Oconee and Anderson.

The prayer of the bill is the same as in the preceding case, with the addition that the parties holding said Revenue Bond Scrip may be called in and admitted to prove the same, and that the whole amount of said scrip may be ascertained; that upon such ascertainment, proper process may be decreed against the State Treasurer, requiring him to redeem the said scrip, and to receive the same in payment of dues to the State; and against the Comptroller-General, requiring him to levy and collect the tax for the redemption of said scrip; that
37 the County Treasurers of the said State be required to receive such scrip as may be established as a claim under the contract created by the Act of 2d March, 1872, in payment of taxes; and that mandatory injunctions may be issued requiring the Comptroller-General to cease from refusing to levy the tax for retiring the said scrip; and the County Treasurers to cease from refusing to receive the same for taxes.

ANSWERS.

The answers of the defendants in the two cases are substan-
38 tially the same. (Record No. 108, p. 11, f. 12, and Record No. 109, p. 16, f. 26.)

1. They deny that the express conditions and provisos set forth in the Act of 15th September, 1868, "*to authorize additional aid to the Blue Ridge Railroad*," upon the performance and compliance with which only were the bonds guaranteed by the State to be used, were ever complied with; and that said conditions being clearly expressed in the Act which authorized the issue of the bonds, express notice was thereby given to every person dealing with the said bonds, and bound
39 them to see that said conditions had been fulfilled. And that said conditions never having been performed, any use made

of said bonds, as set forth in said bills, was unauthorized and illegal.

2. They deny that the said conditions and provisos of the Act of 15th September, 1868, were repealed by the Act of 6th March, 1871, "*to promote the consolidation of the Greenville and Columbia Railroad Company, and the Blue Ridge Railroad Company*," because all the sections of said last mentioned Act, including the section repealing the second section of the Act of 15th September, 1868, were made "in view of the consolidation of said roads," and are essential parts of the consolidation proposed by said Act, and have relation to and are conditioned and dependent upon such consolidation. 40

That the Companies mentioned in said Act of 6th November, 1871, never accepted the said Act, and never complied with its provisions, and the said intended consolidation never took place.

They therefore deny that there was any authority to sell or pledge the said bonds of the Blue Ridge Railroad Company exchanged for Revenue Bond Scrip, and that the complainants were *bona fide* owners of these bonds; they deny that the State received any legal consideration in the surrender and extinguishment of said bonds, and deny that the complainants are *bona fide* holders and owners of the Revenue Bond Scrip received by them in exchange for the bonds. 41

3. They aver that the Act of 2d March, 1872, to relieve the State of its liability for its guaranty of the bonds of the Blue Ridge Railroad Company, was passed by the fraudulent misrepresentation of the Blue Ridge Railroad Company. That said Act is repugnant to the Constitution of the State of South Carolina, and the Constitution of the United States; and that in a case duly made between the State of South Carolina, at the relation of E. F. Gary, tried in the Circuit Court of said State for the County of Richland, it was adjudged that the said Act was unconstitutional and void, and the County Treasurers and all other officers of the State were enjoined from collecting the tax levied by the said Act, and the State Treasurer was enjoined from issuing any of the said scrip; and that, upon an appeal duly taken to the Supreme Court of the said State, the said decree of the Circuit Court 42 43

was affirmed, and judgment entered on the 9th June, 1873, which judgment stands in full force.

4. They aver that they have been enjoined by the supreme authority of the State of South Carolina from doing what is demanded of them by the complainants; and that they can not but submit to said authority; and that the State of South Carolina is the principal, and real and necessary party to this
44 suit, without whose presence no action can be taken by the Court; and pray that they may have the same benefit thereof as if they had formally demurred.

5. That by the repeal of the several sections of Acts referred to in the bills, and the abolition of the office of State Auditor, there is no person authorized to levy or collect the tax referred to; and the several County Treasurers of the State are expressly forbidden, as well by the Legislature as by the mandate of the Supreme Court, from levying or collecting said tax, or from receiving or paying out any of said
45 Revenue Bond Scrip, and the Court is without jurisdiction to enforce such receipt or collection; that the only remedy of the complainants is by petition to the General Assembly of the State, and that any jurisdiction over such matter is denied to the Courts by the Constitution of the United States.

6. The State and County officers have given bonds to the State for the performance of the duties of their offices, and both they and their sureties will be responsible should they fail to obey the orders of the Court and Legislature. That the proper party to the suit is the State of South Carolina,
46 and that if the Court has no jurisdiction to make the State a party, it would be unjust and illegal to make any decree against them.

JOINDER OF WESLEY.

"At the trial, Mr. Edward B. Wesley, of New York, was present, and brought into Court his Revenue Bond Scrip, as well as the complainant, A. D. Williams, and submitted his rights to the Court." (Record, p. 81, f. 115, and p. 91, f. 130.)

"Edward B. Wesley, of New York, having appeared in open
47 Court, and consented to be a party complainant with said Amos D. Williams, and having produced and exhibited to the

Court the Revenue Bond Scrip referred to in the pleadings in this action, to wit: $1,005,000." Decree, (Records, p. 82, f. 118, and p. 92, f. 133.)

DECREES.

The decrees filed in the two cases are identical; they hold:

1. That the Act of 2d March, 1872, was lawful and constitutional under the Constitution of the United States, and 48
the Revenue Bond Scrip was issued thereunder by a lawful exercise of authority on the part of the Legislature; and said Revenue Bond Scrip is—so far as the present holders of said scrip, to wit: Edward B. Wesley and Amos D. Williams, and such other parties and corporations, as appear by the proofs on file in this cause to have lawfully acquired the same, are concerned—lawful and constitutional securities in the hands of the holders thereof, and are not bills of credit within the provision of the Constitution of the United States.

2. That said Act of 2d March, 1872, was a valid and bind- 49
ing contract between the State of South Carolina and the different owners and holders of said Revenue Bond Scrip, and bound the State of South Carolina, and the different State officers thereof, to do and perform the duties cast upon them by said Act to be performed, in such manner as by said Statute is provided and directed.

3. That the said Amos D. Williams is a *bona fide* holder of $166,000 of said Revenue Bond Scrip; and the Blue Ridge Railroad Company were *bona fide* holders of $1,005,000 of said Revenue Bond Scrip, subject to the lien of said Edward 50
B. Wesley for the sum of $344,925, with interest from March, 1872, upon payment of which sum and the discharge of which lien the equitable ownership of said Revenue Bond Scrip is in the assignees in bankruptcy of said Blue Ridge Railroad Company.

4. That the Act of 22d October, 1873, whereby the Legislature of the State of South Carolina repealed the fourth section of the Act of 2d March, 1872, and forbade the Comptroller-General of the State to levy the tax provided for the redemption of said Revenue Bond Scrip, and also the pro- 51
visions of the Act passed 22d December, 1873, wherein the

said Legislature forbade any State or County officer to receive said Revenue Bond Scrip in payment of such taxes as aforesaid, were each and every of them passed in violation of the contract entered into, by and between the complainants and the State of South Carolina, and were and are respectively unconstitutional and void.

It is ordered:

52 1. That it be referred to the Clerk of the Court, as Special Master, to take proof of the claims of all parties other than the said Amos D. Williams and Edward B. Wesley (whose claims are thereby adjudged as established), claiming to hold any of said Revenue Bond Scrip *bona fide* and for value, who may, on contributing *pro rata* to the expenses of such reference and this action, prove their claims. And that said Special Master do ascertain and report the total outstanding amount of said Treasury Certificates of Indebtedness.

2. That for the purpose of defending itself the State of
53 South Carolina may, at its option, and in such manner as it may be advised to be proper, be allowed upon the application of the Attorney-General of said State on its behalf, to be made a party to these proceedings.

3. That upon the ascertainment of the amount of said Revenue Bond Scrip outstanding, proper process do issue out of and under the seal of the Court against the State Treasurer of the State of South Carolina, for the time being, and his successors in office, compelling and requiring him and them to perform the duties enjoined upon the incumbent
54 of that office, by the fourth Section of the Act of 2d March, 1872, to wit, to redeem the said scrip, and compelling him and them to receive the same in payment of all taxes and other dues to the State, except the special tax levied to pay interest on the public debt; that proper process do issue out of and under the seal of the Court against the Comptroller-General of the said State for the time being, and his successors in office, compelling and requiring him and them to perform the duties enjoined upon that officer by the different sections of the Act of 2d March, 1872, and compelling and
55 requiring him, from time to time, to prepare and transmit to the several County Auditors all such forms and instructions

as may be proper and lawful for levying and collecting in the same manner as the annual taxes, the taxes required by the fourth section of the Act of 2d March, 1872; and that proper process do issue out of and under the seal of the Court, compelling and requiring the different County Treasurers of the said State, for the time being, and their successors in office, to receive the said scrip in payment of all taxes due to the State, except the special tax levied to pay interest on the 56
public debt.

And in all cases where a tender of said scrip is made, and the same refused, an injunction may issue, restraining the County Treasurer so refusing from selling property, or in any manner enforcing payment of said taxes.

ASSIGNMENT OF ERRORS.

I.

57

There was error in holding that the judicial power of the Courts of the United States extends to these cases. They are suits to enforce the execution of a contract alleged to have been entered into by the State of South Carolina, by the Act of 2d March, 1872, the validity of which is denied, and which the Supreme Court of that State has decided not to be valid; and to compel, by judicial process, the officers of the State to do the acts which constitute a performance of its contract by the State, and which the Legislature and Supreme Court of the State have prohibited them from doing, 58
and when the judgment of the Court can not protect them; and therefore are suits against the State, to which the State is the real and necessary party, and to which it is not a party and, under the Eleventh Amendment of the Constitution of the United States, can not be made a party.

II.

The bills should be dismissed because they do not show any breach of contract, or other ground of relief to which complainants are entitled, and call for decrees declaring 59
merely abstract rights.

III.

His Honor the Circuit Judge erred in holding that the Act of the Legislature of South Carolina "*to relieve the State of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company, by providing for the securing and destruction of the same*," passed 2d March, 1872, was a lawful and constitutional Act under the Constitution of the United
60 States; and that the Revenue Bond Scrip issued thereunder, are lawful and constitutional securities in the hands of the holders thereof, and are not bills of credit within the provisos of the Constitution of the United States.

IV.

His Honor, the Circuit Judge, erred in not holding that the Bonds of the Blue Ridge Railroad Company, issued under the Act of 15th September, 1868, to authorize additional aid to the Blue Ridge Railroad, were sold and hypoth-
61 ecated without authority; and that the complainants were not *bona fide* holders and owners of the same; and that the State received no legal consideration in the surrender and extinguishment of said bonds; and that the complainants are not *bona fide* holders and owners of the Revenue Bond Scrip received by them in exchange for said bonds, upon the grounds set forth in the Answers of Defendants.

V.

His Honor, the Circuit Judge, erred in not holding that
62 the said Act of 2d March, 1872, was null and void, because in violation of the Constitution of the State of South Carolina.

VI.

His Honor, the Circuit Judge, erred in not holding that the said Act of 2d March, 1872, was null and void, upon the other grounds set forth in the Answers of Defendants.

VII.

His Honor, the Circuit Judge, erred in holding that the
63 Acts of the Legislature, passed on 22d October, 1872, and 22d December, 1873, specified in the decree, were unconstitutional and void.

VIII.

His Honor, the Circuit Judge, erred in ordering that it be referred to the Clerk of the Court, as Special Master, to call in and take proof of the claims of all holders of the Revenue Bond Scrip.

2. In directing that, upon the ascertainment of the amount of said Revenue Bond Scrip outstanding, proper process do issue out of and under the seal of the Court against the Treas- 64
urer and Comptroller-General of the State, and the several County Treasurers of the State, for the time being, and their successors in office, requiring them to do the several things required of them by the Act of 2d March, 1872, which, by the Legislature and Courts of the State of South Carolina, they had been prohibited and enjoined from doing.

3. In directing that in all cases where a tender of said Revenue Bond Scrip is made and refused, an injunction may issue, restraining the County Treasurer so refusing from sell-
ing property, or in any manner enforcing payment of said 65
taxes.

4. In making a decree in the suit brought by the assignees in bankruptcy of the Blue Ridge Railroad Company, in relation to the Revenue Bond Scrip in the hands of Wesley, which they seek to redeem, the said Wesley being a necessary party, and not having been made a party to the said suit.

5. In allowing the said Wesley to be made a party complainant to the bill of Williams, by appearance in Court, and submitting his rights to the Court without motion or order.

66

POINTS AND AUTHORITIES.

I.

The Courts of the United States are without Jurisdiction of these Cases.

They are, in effect, suits to enforce specific performance of a contract of the State of South Carolina, alleged to have been created by the Act of 2d March, 1872, under which the Revenue Bond Scrip held by the complainants was issued. 67

The relief sought is, that it may be decreed that a valid

contract subsists between the holders of the scrip and the State of South Carolina, whereby the State is bound to perform the matters and things promised by it to be done by th said Act and the said Scrip; that all *bona fide* holders for value of said scrip may be called in; that upon the ascertainment of the amount of said scrip, the Comptroller-General of the State may be required to levy a tax to satisfy the said
68 scrip; that the State Treasurer may be required to redeem the said scrip, and to receive it in payment of all dues to the State; that all Country Treasurers be required to receive the scrip in payment of all taxes (other than the tax excepted in the Act); and that the State may be allowed to become a party for the purpose of defending itself.

(Records, p. 8, f. 13, and p. 12, f. 17.)

The relief granted by the Circuit decrees conforms to the relief sought in the bills.

69 (Records, p. 85, f. 129, and p. 95, f. 143.)

The validity of the alleged contract is denied; the Supreme Court of the State has adjudged the Act to be unconstitutional and void; the Legislature has prohibited under severe penalties, and the State Court has enjoined, the several State and County officers from doing the things required by the Act of 2d March, 1872, and which the Circuit Court has ordered them to do.

The relief sought and granted in these cases, can not be
70 afforded in a Court of the United States, because to such a suit the State is the real and necessary party, and the State is not and can not be made a party.

While (as was said in the opinion of this Court in the case of *Cunningham vs. Macon & Brunswick R. R. Co.*, 109 U. S., 451) it is not an easy matter to reconcile all the decisions of the Court in the classes of cases, in which, while acknowledging the incapacity of the Courts of the United States to assume jurisdiction of a State as a party, efforts have been made to proceed in such a manner against the officers or
71 agents of the State Government, or against the property of the State in their hands, as that relief can be had without

making the State a party; we submit that no case has been decided by this Court which can be successfully relied on to sustain the Circuit decrees in these cases. On the contrary, the decrees in these cases made in May, 1882, are entirely irreconcilable with the decisions made by this Court since that time.

In the cases of *Louisiana vs. Jumel*, and *Elliott vs. Wiltz*, decided by this Court, October Term, 1882 (107 U. S., 711), 72
the complainants and relators were holders of bonds of the State of Louisiana, issued under an Act of 1874, which, as determined by this Court, constituted a contract between the State and the holders of these bonds, to levy and collect a specified annual tax, and to apply the proceeds exclusively to payment of these bonds, and that this should be a continuing annual appropriation for that purpose, requiring no further authority to enable the taxing officers to levy and collect the tax, and the disbursing officers to pay out the money as collected in payment of the bonds. 73

The State, by a constitutional amendment, called the "Debt Ordinance," adopted in 1879, put a stop to the further levy of the promised tax, and prevented the disbursing officer from using the revenue from previous levies to pay interest falling due in 1880, as well as the principal and interest maturing thereafter (pp. 719, 720).

The parties brought in the State Court of Louisiana, (afterward removed to the Circuit Court of the United States,) a *mandamus* against the Auditor and Treasurer and other officers, requiring them to apply the funds in the treasury derived 74
from the taxes levied, or to be levied, to the retirement of the bonds, *and that they should be required to collect the tax levied by the said Act of 1874*, in the manner and to the extent contemplated by that Act, and to apply the proceeds of said tax to the payment of the interest and the redemption of said bonds, until the bonds, principal and interest, should be discharged; and that they be commanded and required to enforce the aforesaid Act, and to carry out, perform and discharge all ministerial acts and duties required of them by said Act, according to its intent and import. 75

They also brought in the Circuit Court of the United States,

against the same defendants, a suit in Equity, praying that it be adjudged and decreed that the Act of 1874 is a valid and subsisting law of the State of Louisiana; that the Act and the bonds held by them constitute valid contracts, binding upon the State, which cannot be constitutionally impaired; that the Constitutional Amendment and other Acts inconsistent with said Act of 1874 may be decreed to be in violation of the
76 Constitution of the United States and void; and for injunctions forbidding defendants from recognizing as valid said ordinance, or preventing or impeding the enforcement of the Act of 1874.

The Circuit Court denied the relief prayed for in each of the cases, and held that the State was the party which, by its action, had rendered the execution of its contract with the relators impossible, through the instrumentality of its officers, and that the question presented was political, rather than judicial, and could not be adjudicated without calling the
77 State to the bar of the Court and subverting its entire financial basis.

Upon writ of error and appeal to this Court, the judgment and decree of the Circuit Court were affirmed, (the CHIEF JUSTICE delivering the opinion of the Court and JUSTICES FIELD and HARLAN dissenting.)

In the opinion of the Court, it is said in relation to the suit in Equity: "The bonds and coupons which the parties to these suits hold have not been reduced to judgment, and there is no way in which the State, in its capacity as an organized political
78 community, can be brought before any Court of the State, or of the United States, to answer a suit in the name of these holders to obtain such a judgment. It was expressly decided by the Supreme Court of the State of Louisiana that such a suit could not be brought in the State Courts, and under the Eleventh Amendment of the Constitution of the United States no State can be sued in the Courts of the United States by a citizen of another State. Neither was there when the bonds were issued, nor is there now any Statute or judicial decision giving the bondholders a remedy in the State Courts or else-
79 where, either by *mandamus* or injunction against the State, in its political capacity, to compel it to do what it has agreed

should be done, but which it refuses to do. These then are suits by creditors at large of the class provided for by the Act of 1874, to compel, by judicial process, the officers of the State to enforce the provisions of the Act, when the State, by an amendment to its Constitution, has undertaken to prohibit them from doing so, and when the Court, if it requires an officer to proceed, cannot protect him with a judgment to which the State is a party. The persons sued are the Executive officers of the State, and they are proceeded against in their official capacity. * * * * In this way the State has violated its contract, and if it could be sued might perhaps be made to set aside its wrongful appropriation of the money already in hand, and raise more by taxation if necessary. * * * * The question then is whether the contract can be enforced, notwithstanding the Constitution, by coercing the agents and officers of the State, whose authority has been withdrawn, in violation of the contract, without the State itself, in its political capacity, being a party to the proceeding. 80 81

The relief asked will require the officers against whom the process is issued to act contrary to the positive orders of the supreme political power of the State, whose creatures they are, and to which they are ultimately responsible in law for what they do. * * * * All that is asked will enure as much to the benefit of the other holders of similar obligations as to the particular parties to these suits, so that the remedy sought implies power in the judiciary to compel the State to abide by and perform its contracts for the payment of money, not by rendering and enforcing a judgment in the ordinary form of judicial procedure, but by assuming the control of the administration of the fiscal affairs of the State to the extent that may be necessary to accomplish the end in view. (pp. 720–722.) 82

Again (at p. 724): "There is nothing in any of the cases in this Court that are relied on, which, to our minds, authorizes any such relief as is asked." The cases of *Osborn vs. Bank of the United States*, 9 Wheat., 738; *Davis vs. Gray*, 16 Wall, 203; *Board of Liquidation vs. McComb*, 92 U. S., 531; *United States vs. Lee*, 106, U. S., 196, are then reviewed. 83

As to the suit for *mandamus*, it is said (p. 727): "the simple question presented is whether a single bondholder, or a committee of bondholders, can, by the judicial writ of *mandamus*, compel the executive officers of the State to perform generally their several duties under the law. The relators do not occupy the position of creditors of the State, demanding payment from an executive officer charged with the minis-
84 terial duty of taking the money from the public Treasury and handing it over to them, and on his refusal seeking to compel him to perform that specific duty. What they ask is that the Auditor and Treasurer of the State, and the Board of Liquidation, may be required to enforce the Act of 1874, and carry out, perform and discharge each and every one of the ministerial acts, things, and duties respectively required of them, . . . according to the full and true intent and purport of that Act. * * * * * * * The remedy sought in order to be complete, would require the Court to assume all
85 the executive authority of the State, so far as it related to the enforcement of this law, and to supervise the conduct of all persons charged with any official duty in relation *to the levy, collection and disbursement of the tax* in question until the bonds, principal and interest, were paid in full, and that, too, in a proceeding to which the State, as a State, was not and could not be made a party. It needs no argument to show that the political power cannot be thus ousted of its jurisdiction and the judiciary set in its place.

When a State submits itself, without reservation, to the
86 jurisdiction of a Court in a particular case, that jurisdiction may be used to give full effect to what the State has, by its act of submission, allowed to be done. And if the law permits coercion of the public officers to enforce any judgment that may be rendered, then such coercion may be employed for that purpose. But this is very far from authorizing the Courts, when a State cannot be sued, to set up its jurisdiction over the officers in charge of the public moneys, so as to control them as against the political power in their administration of the finances of the State. In our opinion to grant
87 the relief asked for in either of these cases would be to exercise such power."

In *Antoni v Greenhow*, decided at the same term, (107 U. S., 769) the point decided was only as to the adequacy of the remedy which an Act of the State of Virginia substituted for *mandamus* to compel the receipt of certain coupons for taxes, and that the obligation of the contract of the State was not thereby impaired. (Affirmed in *Moore vs. Greenhow*, 114 U. S., 338.)

The opinion of the Court was delivered by the CHIEF JUSTICE. 88
Mr. JUSTICE MATHEWES, in his separate concurring opinion, p. 783, says: "I agree that the State of Virginia, by the Act of 1871, entered into a valid contract with the holders of its bonds to receive their coupons in payment of taxes; and that any subsequent statute which denies this right is a breach of its contract, and a violation of the Constitution of the United States.

But for a breach of its contract by a State no remedy is provided by the Constitution of the United States against the State itself; and a suit to compel the officers of a State to do the acts 89
which constitute a performance of its contract by the State, is a suit against the State itself. If the State furnishes a remedy by process against itself or its officers, that process may be pursued because it has consented to submit itself to that extent to the jurisdiction of the Courts; but if it chooses to withdraw its consent by a repeal of all remedies, it is restored to the immunity from suit which belongs to it as a political community, responsible in that particular to no superior.

I adopt as decisive of this case the language of the Chief Justice in the last paragraph of the opinion of the Court in 90
Louisiana vs. Jumel" (quoted above): "I do not therefore consider it necessary to enter upon the inquiry whether the remedy provided by the State of Virginia by the Act of 1882, is effective and substantial compared with that which existed in 1871, when the bonds were issued. It is sufficient to say that it is the one which the State has chosen to give, and the only one, therefore, which the Courts of the United States are authorized to administer."

J. J. BRADLEY, WOODS and GRAY concurred in the judgment upon both grounds, that stated in the opinion of the 91
Court as delivered by the CHIEF JUSTICE, and that stated in the opinion of MR. JUSTICE MATTHEWS.

J. J. FIELD and HARLAN dissented (p. 784).

In *Cunningham vs. Macon & Brunswick R. R. Co.*, decided October Term, 1883 (109 U. S., 446), it was held, that whenever it is clearly seen that a State is an indispensable party to enable the Court, according to the rules which govern its procedure, to grant the relief sought, it will refuse to take jurisdiction.

92 The cases at law and in equity in which the Court has taken jurisdiction when the objection has been interposed, that a State was a necessary party to enable the Court to grant relief, are examined and classified in the opinion of the Court delivered by MR. JUSTICE MILLER.

The case of *United States vs. Lee*, 106 U. S., 196, is examined and the limits of the decision defined.

Of the case of *Davis vs. Gray*, 16 Wall., 203, it is said: "But it is clear that, in enjoining the Governor of the State in the performance of his executive functions, the case goes
93 to the verge of sound doctrine, if not beyond it, and that the principle should be extended no further. Nor was there in that case any affirmative relief granted by ordering the Governor and Land Commissioner to perform any act towards perfecting the title of the Company."

The cases of *Louisiana vs. Jumel*, and *Elliott vs. Wiltz*, are included in the review. The opinion concludes:

"No money decree can be rendered against the State, nor against its officers, nor any decree against the Treasurer, as settled in *Louisiana vs. Jumel*.

94 "If any branch of the State Government has power to give plaintiff relief, it is the Legislature Why is it not sued as a body, or its members by *mandamus* to compel them to provide means to pay the State's endorsement? The absurdity of this proposition shows the impossibility of compelling a State to pay its debts by judicial process."

J. J. HARLAN and FIELD dissented.

The principles fixed by these decisions; that the execution of a contract of a State can not be enforced, nor relief be awarded against officers of the State, who are merely obeying
95 the positive orders of the supreme political power of the State in a suit to which the State is not a party; that "for a breach

of its contract by a State, no remedy is provided by the Constitution of the United States against the State itself, and a suit to compel the officers of the State to do the acts which constitute a performance of its contract by the State, is a suit against the State itself;" and that of such cases the Courts of the United States are without jurisdiction; have not been overruled or modified in the "VIRGINIA COUPON CASES," decided at October Term, 1884 (114 U. S., 269,) but are 96
recognized and approved in the opinion of the majority as well as of the minority of this Court.

The principles upon which the decision in the Virginia cases depends, are that the tender in payment of taxes of coupons made receivable for taxes by the contract of the State, is equivalent to actual payment, and deprives the collecting officer of all authority for further action, and makes every subsequent step illegal and void. That after such tender the tax payer was entitled to any legal remedy to defend himself against anything done or threatened to be 97
done by the State officer to enforce payment of the taxes paid by such tender. And that an action brought by the tax payer who has tendered said coupons in payment of taxes, against the person acting under color of his office as tax collector, and in enforcement of a void law, who proceeds by seizure and sale of plaintiff's property to enforce payment of the tax paid by said tender, is an action against him personally as a wrong doer, and not against the State within the meaning of the Eleventh Amendment of the Constitution of the United States. The other points decided are only corro- 98
laries to the main propositions.

The opinion of the Court in *Poindexter vs. Greenhow*, points out the distinction between the cases in which the holder of such coupons is "an actor seeking specifically to enforce the contract of the State with the coupon holder, by compelling, by affirmative action and process of law, the collector actually to receive the conpons tendered in satisfaction of taxes," and that case in which "he is a defendant passively resting on his rights, and resisting only demands and exactions sought to be enforced against him in denial of them." (p. 281.) 99

As to the objection urged that the suit of the plaintiff could

not be maintained because it is substantially an action against the State of Virginia, to which she has not assented, the opinion shows, that the question whether a suit is within the prohibition of the Eleventh Amendment is not always to be determined by reference to the nominal parties on the record. The provision is to be substantially applied in furtherance of its intention, and not to be evaded by technical and trivial
100 subtleties: In *New Hampshire vs. Louisiana* and *New York vs. Louisiana* (108 U. S. 76), where the State was the nominal but not the real party, it was held that this Court was without jurisdiction; and on the other hand, in *Cunningham vs. Macon and Brunswick R. R.*, 109 U. S., 446, where the State of Georgia was not nominally a party on the record, it was held that as it clearly appeared that the State was so interested in the property, that final relief could not be granted without making it a party, the Court was without jurisdiction." (p. 287.)

101 " Tried by every test which has been judicially suggested for the determination of the question, this cannot be considered to be a suit against the State. The State is not named as a party in the record; the action is not directly upon the contract; it is not for the purpose of controlling the discretion of executive officers, or administering funds actually in the public Treasury, as was held to be the case in *Louisiana vs. Jumel*, it is not an attempt to compel officers of the State to do the acts which constitute a performance of its contract by the State as suggested by a minority of the Court in
102 *Antoni vs. Greenhow*, (107 U. S., 783), nor is it a case where the State is a necessary party, that the defendant may be protected from liability to it, after having answered to the present plaintiff." (p. 293.) Although the plaintiff below was nominally the actor, the action itself is purely defensive, (p. 295,) * * * * the plaintiff did not seek any compulsory process against the officer to require him specifically to receive the coupons tendered. He offered them and they were refused. He chose to stand upon the defensive, and maintain his rights as they may be assailed." (p. 299.)

103 It would seem to be a waste of the short time allowed for argument to dwell further upon the identity of the present

cases, with those of *Louisiana vs. Jumel* and *Elliott vs. Wiltz*; in that the relief sought and granted is the establishment by the decree of the Court of the validity of the Statute under which complainants claim, and the invalidity of the Statutes inconsistent therewith; the enforcement of the contract of the State by compelling, by judicial process, the officers of the State to enforce the provisions of the Act which the State has prohibited them from doing, by a decree which cannot protect 104
them from their responsibility, criminal as well as civil, to the State, whose creatures they are, and to which they will be subjected by obeying the decree; and when such remedy requires the Court to assume the executive authority and functions of the State, by controlling the administration of its fiscal affairs to the extent, and until such time as may be necessary for the redemption of the entire $1,800,000 of Revenue Bond Scrip; thereby "subverting its entire financial basis," and "ousting the political power of the State of its jurisdiction, and setting the judiciary in its place." 105

And this, where the State, which has, through its Legislative and Judicial Departments, declared that no valid contract exists, is not and cannot be made a party.

Nor can it be necessary to further dwell upon the essential difference between these cases and the case of *Poindexter vs. Greenhow*.

The complainants, by the prayer that the State may be allowed, on the application of its Attorney-General, to become a party "for the purpose of defending itself;" and the Circuit Judge, by the decree to the same effect, seem to concede that 106
the State is a necessary party to the proceedings for the specific performance of the contract alleged to have been entered into by it with the holders of the Revenue Bond Scrip. And on Circuit it was averred that to allow the objection that the State was not a party, would be to allow the State to take advantage of its own wrong in not becoming a party.

To this it seems only necessary to say that the Attorney-General has no authority to make the State a party.

As said by this Court in *United States vs. Lee*, (106 U. S.): "There is vested in no officer or body the authority to con- 107
sent that the State shall be sued, except the law-making

power, which may give such consent on the terms it may choose to impose. *The Davis*, 10 Wall, 15."

But if the State had been made a defendant originally, or by amendment, the Courts of the United States, under the Eleventh Amendment, would be without jurisdiction.

II.

108 *The complainants have not set forth, or made out, cases entitling them to the relief prayed, and the bills should be dismissed.*

No. 109.

The complainant, Williams, does not allege or prove that he had tendered the scrip held by him in payment of taxes or other dues to the State, or that he owes any taxes or other debt to the State. He does allege that he tendered his said scrip to the defendant, Leaphart, State Treasurer, and de-
109 manded payment of the same, which was refused; that he informed the defendant, Hagood, Comptroller-General, of the said refusal of the Treasurer, and requested him to take the steps necessary to levy and collect the tax requisite for the redemption of said scrip; and that he neglected and refused to comply with said request. He further alleges that he is a banker and broker in the city of New York, and was so when he acquired the Revenue Bond Scrip held by him; that at the time he took said scrip he was able, in open market, to dispose of the same to parties desiring to use the same in
110 payment of taxes to the State of South Carolina; that for such purposes the said scrip commanded a price of seventy-five cents of its face value, and that he disposed of a quantity of said scrip at that rate on a conditional sale that said scrip could be so used in payment of taxes; but that the different County Treasurers of the different Counties of the State, among others, the County Treasurers of the Counties of Charleston, Oconee, Anderson and Richland (who are made defendants), have refused, and continually refuse, to receive said scrip in payment of taxes, whereby the said scrip has
111 ceased to have any market value, and his property has been very much diminished in value, by reason of the refusals of

the said several State and County officers to perform the duties required of them by the Act of 2d March, 1872. The evidence shows that Williams did not part with the property in his scrip by his conditional sale to Cathcart (Record, p. 29, f. 44); and in his bill, sworn to, he alleges that he was then the owner of the entire $166,000 of Revenue Bond Scrip, which he received in exchange for Bonds of the Blue Ridge Railroad Company. (Record, p. 7, f. 11.) 112

The bill is filed in behalf of all holders of the scrip who will come in and prove their claims and contribute to the expenses of the suit.

The case comes within the principles decided in the case of *Marye, Auditor, &c., vs. Parsons* (114 U. S., 325). The only difference in the cases is, that Parsons did not ask for a decree that his coupons should be paid at maturity, and did not allege that any of his coupons had been tendered by any taxpayer in payment of taxes, nor that there had been a refusal of any officer to receive those coupons in payment. But he 113 did allege that "the defendants, as officers of the State, as is publicly known, habitually refused to accept coupons when tendered by taxpayers in payment of taxes;" and that he had made arrangements with sundry taxpayers of Virginia to use his coupons in payment of their taxes, whereby he would be able to receive nearly par therefor, and that unless so accepted in payment when tendered, taxpayers will not use them, and he will be deprived of the benefit of such arrangements. The prayer for relief is substantially the same as in Williams's Bill.

114

In that case MR. J. MATTHEWS, in delivering the opinion of the Court, says: "This bill is without precedent, and should have been dismissed. It is a clear case, as stated, of *damnum absque injuria*. So far as the contract with the complainant was that the State should pay to him his coupons at maturity, there is no doubt a breach; but he asks no relief as to that, for there is no remedy by suit to compel a State to pay its debts. So far as the contract was to receive the coupons of the complainant in payment of taxes and other dues to the State, there is no breach, for he does not allege that any of 115 them have been tendered by any taxpayer or debtor to the

State in payment of taxes or other dues; nor that there has been a refusal on the part of any tax collector or other officer of the State, charged with the collection and receipt of taxes and dues to the State, to receive them in payment therefor. *Personally, the complainant has no right to offer them for such purpose, for he owes no taxes or other debts to the State.*

There is nothing shown in the bill by which he is prevented
116 from transferring them to others who would have the legal right to use them in that way, except that, being discredited for such uses by the previous refusals of the officers of the State to receive other, but similar coupons, the complainant can find no one willing to purchase them from him at a reasonable price for such purposes. This damage is not actionable, because it is not a direct and legal consequence of a breach of the contract, and is not distinguishable from the damage any creditor might suffer from the known inability or unwillingness of his debtors to perform their obligation.
117 Such discredit might and often does, result in the bankruptcy and financial ruin of the creditor, but no action lies to recover damages for the consequential loss, which the law does not connect with the default as cause and effect. *To enable the complainant to avail himself of the benefit of his contract with the State, to receive his coupons in payment of taxes, he must first assign them to some one who has taxes to pay, as he has not, but when he does so, by the assignment he has lost his interest in the contract and his right to demand its performance, all right to which he has transferred with the coupons.* It is
118 only when in the hands of tax payers or other debtors that the coupons are receivable in payment of taxes and debts due the State. The bill as framed, therefore, calls for a declaration of an abstract character, that the contract set out, requiring coupons to be received in payment of taxes and debts due to the State, is valid; that the statutes of the General Assembly of Virginia, impairing its obligations, are contrary to the Constitution of the United States, and, therefore, void; and that it is the legal duty of the collecting officers of the State to receive them when offered in payment of such taxes and
119 debts. But no Court sits to determine questions of law *in thesi*. There must be a litigation upon actual transactions

between real parties, growing out of a controversy affecting legal or equitable rights as to person or property. All questions of law, arising in such cases, are judicially determinable. The present is not a case of that description."

No. 108.

In the case of the assignees in bankruptcy of the Blue Ridge Railroad Company, it is alleged that the said Company, when it was adjudicated a bankrupt April, 1873, was indebted to the State in the sum of $10,845.33 for taxes assessed against its property in the Counties of Oconee and Anderson for the fiscal year 1872, and that Revenue Bond Scrip was tendered by the assignees to the County Treasurers of said Counties for the taxes assessed and due in the respective Counties, and that the tender was refused. The tender was made in July, 1874, for the taxes of the fiscal year, 1872. (Record, p. 26.) The original bill was filed in August, 1874. (Record, p. 64.) The amended bill was filed in May, 1879, and the successors of the County Treasurers to whom the tenders were made, are made defendants. 120 121

No allegation is made nor proof offered that any action has ever been taken or threatened by any County or State officer since the tender was made, to collect the taxes for which the scrip was tendered.

The entire property of the Blue Ridge Railroad Company had been sold by the assignees in bankruptcy, under orders of the Court, in October, 1874, prior to the filing of the amended bill; and J. L. Low had been discharged as assignee, and R. L. McCaughrin substituted, and Hamlin Beatie had been appointed assignee in place of George W. Williams, by order of 26th August, 1879, prior to the filing of the decree. [*See Certificate of the Clerk of the District Court of the United States for the District of South Carolina, appended to this Brief.*] 122

These complainants, therefore, have no interest in the property for the taxes on which the Revenue Bond Scrip was tendered, nor any duty in relation thereto.

The injury of which they complain is that the Revenue Bond Scrip which complainants hold, and that in the hands of Wesley, in which they claim an interest, has been 123

depreciated in value by the refusal of the State and County officers to do those things required of them by the Act of 2d March, 1872, and that unless restrained the scrip will not be
124 worth the amount for which it is pledged. Wesley, however, is not a party to this suit, and the relief sought is the performance of the contract of the State by compulsory process against its officers. There has been no levy made or threatened to be made upon property of the complainants, as in *Allen vs. Baltimore & Ohio Railroad Co.* (114 U. S., 311); but the complainants having suffered no injury, this case also comes within the principles of the case of *Marye vs. Parsons, supra.*

These cases, we submit, "call for a declaration of an ab-
125 stract character," but to enforce the alleged contract of the State to receive this Revenue Bond Scrip in payment of taxes, the holders must institute "litigation upon actual transactions between real parties growing out of a controversy affecting legal or equitable rights as to person or property."

This can be done by tendering the Revenue Bond Scrip in payment of taxes, and if refused, to pay the taxes under protest, and bring suit against the County Treasurer to recover the money so paid, under the provisions of the "Act to facilitate the Collection of Taxes," approved 24th December, 1878
126 (16 S. L., 786, incorporated in General Statutes of South Carolina, Sec. 268), the provisions of which are substantially the same as the Statute of Tennessee, the validity of which was sustained by this Court in *Tennessee vs. Sneed* (96 U. S., 69), and the Statute of Virginia sustained in *Antoni vs. Greenhow*, 107 U. S., 769; *Moore vs. Greenhow*, 114 U. S., 338.)

(See *South Carolina vs. Gaillard*, 101 U. S., 437.)

The decision of the Supreme Court of the State in such cases can be brought by writ of Error or Appeal to this Court
127 for review.

III.

The Act of the Legislature of South Carolina, passed 2d March, 1872, which authorized and required the State Treasurer to execute and deliver "Treasury Certificates of Indebtedness of the State of South Carolina (styled Revenue Bond Scrip") is in violation of Article I, Section 10, of the Constitution of the United States, which declares that no State shall emit bills of credit, or make anything but gold and silver coin a tender in payment of debts, and is null and void. 128

The provisions of the Act of 2d March, 1872, are stated in this Brief (ff. 12–17), and the Act is given in full in the Records (p. 53, f. 76, and p. 60, f. 87). The history 129
of the preparation and issue of the Revenue Bond Scrip is given in the testimony of NILES G. PARKER, the State Treasurer, by whom it was signed (Record, p. 39, f. 57, and p. 43, f. 64), and of VANZANT, Manager of the American Bank Note Company (Record, p. 38, f. 56, and p. 42, f. 63), and JOHN J. PATTERSON, President of the Blue Ridge Railroad Company (p. 45, f. 66, and p. 41, f. 59). There were three issues, the first or "original scrip," was printed in Columbia, S. C.; the second was engraved by the American Bank Note Company in New York, and was intended to be substituted 130
for the original printed scrip. Wesley exchanged his scrip for the engraved scrip. The third, known as the "Washington Scrip," was printed in Washington, as a substitute for the scrip engraved by the American Bank Note Company, that Company having been enjoined from issuing the scrip engraved by them, at the suit of Anson, Bangs & Co., in New York, creditors of the Blue Ridge Railroad Company. (Record, p. 46, f. 68.) The form of the scrip is as follows (Record, p. 24, f. 36, and p. 23, f. 36.)

 131

No. 90.

Revenue Bond Scrip.

THE STATE OF [PALMETTO TREE] SOUTH CAROLINA,
COLUMBIA, S. C., March, 1872.

Receivable as one hundred dollars in payment of all taxes and dues to the State, except special tax levied to pay interest on public debt. NILES G. PARKER,

132 *State Treasurer*

One hundred dollars. One hundred dollars.

[On each side of scrip] One hundred dollars, Act March, 1872.

The scrip is for amounts from one dollar to five thousand dollars. (Records, pp. 44 and 48.)

In the cases of "*The State of South Carolina ex relatione, E. F. Gary vs. Niles G. Parker, State Treasurer*, and *Dupré vs. County Treasurer*, which were proceedings to enjoin the State and County Treasurers from receiving the said scrip for past

133 due taxes, and for taxes thereafter to be collected, before Willard, A. J., of the Supreme Court, in 1873; it was adjudged that the Act of 2d March, 1872, was unconstitutional and void, and that the scrip issued thereunder was illegal; and the Court ordered that the State and County officers be enjoined from receiving the said scrip in payment of taxes and from paying out the same.

In the case of "*The State ex relatione K. C. Shiver, J. P. Southern, et al, vs. S. L. Hoge, Comptroller-General* (4 S. C., 185), which was an application to the Supreme Court of the

134 State for a *mandamus* to compel the Comptroller-General to levy and collect the tax for the redemption of the Revenue Bond Scrip, as provided by Section 4 of the Act of 2d March, 1872; the Court refused to grant the *mandamus*.

The opinion of the Court was delivered 18th April, 1873, by Moses, C. J. Of the case, *State ex rel. Gary vs. Parker*, stated above, it is said: "The judgment which stands in full force, and, until reversed, should be accepted as the law by which the State and County officers connected with the levy and collection of taxes must be governed, holds the emission

135 of the scrip void for its repugnance to the Constitution of the State and of the United States. * * * * * * The respondent,

not only insisting on the cause heretofore noticed, submits that the said Act is null and void, in that it is repugnant to the Constitution of the United States, which ordains that no State shall emit bills of credit, or make anything but gold and silver coin a tender in payment of debts. A careful consideration, induced by the large pecuniary interests involved in the question, together with the fact that provisions both of the State and United States Constitutions have been brought into 136
its discussion, has satisfied us that the Act, so far as it authorizes the emission of Revenue Scrip, is in violation of the clause of the Constitution of the United States, already referred to.

The argument which holds it valid as a subsisting obligation, and repels the character of a bill of credit, under which it is classed by the respondent, seems to rest upon the fact that it was not designed to circulate as money. The opinion of Mr. Justice Willard in *State ex rel. Gary vs. Parker, Treasurer and Dupre vs. County Treasurer*, which was brought to our notice in the case before us, and which will be reported 137
with it, is so full and comprehensive on the point as to leave little space for addition or enlargement. It is not because the paper circulates from hand to hand in a community like money that it is to be held a bill of credit, nor does the fact of currency so constitute it. A State might well make the coupons attached to its bonds receivable for taxes, without subjecting them to the disabilities of bills of credit as used in the Constitution, even although they might readily pass in payment of debts, or for the purchase of commodities. The design to create a circulating medium would be wanting. If, 138
however, the intention to create a currency is apparent from the whole scope of the Act, the emission is a bill of credit, within the terms of the Constitution. To the many indications in the Act to show the intended design, which have been pointed out in the opinion of Justice Willard, it might be added, that the Revenue Bond Scrip could never have been intended or proposed as a State security for investment, because *it bore no interest*, and its value consisted in the fact of its ready capacity and facility in supplying all articles necessary for use or consumption. Its capacity for circulation and 139
its easy convertibility, together with its adaptation to imme-

diate and ready use, would cause a demand for it, which a State bond, although bearing interest, could not command. It is contended that, as this was a provision to meet a debt of the State, the purpose was to furnish a fund for payment, and not a circulating medium. But may not the two co-exist? May not the medium of payment be of such a kind and character as to create in itself a circulating medium? It is not
140 the end which the assumption is to accomplish, but the mode and manner designed and the use contemplated. The State might issue certificates of indebtedness for the redemption of its bonded debt; but if it did so in the form and manner and design proposed by the Act of 2d March, 1872, would they be less obnoxious to the objection urged against the Revenue Bond Scrip, because they were issued to pay or meet a debt? It is not the purpose of the issue which affects the instrument through which it is made, but the characteristics and incidents which attach to it as a provision and recommendation
141 for a circulating medium."

The opinion of Mr. Justice Willard, above referred to, after stating the definition of the terms "bills of credit," employed in the Constitution of the United States, as settled by this Court, in the cases of *Craig vs. Missouri*, 4 Peters, 490, and *Briscoe vs. Bank*, 11 Peters, 257, holds that the Certificates or Revenue Bond Scrip in question are within the definition—because:

1st. They are issued by a State in its sovereign capacity.

2d. That they were to contain a pledge of its faith; and

142 3d. That they were intended to circulate as money.

The first two propositions are determined by the terms of the Act which required the State Treasurer to issue paper, expressing that the sum therein mentioned is due by the State to the bearer thereof.

That it was the intention of the Act that this paper should circulate as money, is shown by the following considerations:

1st. It was intended that the Revenue Bond Scrip should be issued in the form most usual and convenient to serve as paper money, viz: that of the usual bank or treasury note.
143 The form and denomination were to be determined by the Treasurer and the President of the Railroad Company. The

Treasurer is to receive and pay it out from the Treasury, and the President of the Railroad Company is to receive it in such amounts as he should find most convenient for use.

2d. It is based on the credit of the State in its sovereign capacity.

3d. To give it currency, an artificial want is created by making it receivable for taxes.

4th. To keep it in circulation, the Treasurer is authorized 144
to pay it out again after being received, *in satisfaction of any claim against the Treasury*, except for interest on the public debt.

5th. The pledge of the State is not that the scrip shall be paid, but that it shall be redeemed by means of funds to be raised by a special tax, thus increasing the inducement to give it currency.

6th. The volume of the issue, $1,800,000, as compared with the extent of the commercial transactions of the community in which it was to be placed, is the clearest indication of the 145
intention to make it circulate as money. It was to be placed at once in private hands, and the various provisions of the Act looking to its distribution among the people, precludes the idea that the recipients of this large fund should hold it until redemption, or even that it should be kept together in the hands of a limited number of holders; but the magnitude of the interest in the hands of the first receiver was such as to warant the assumption that it would become diffused throughout the community.

7th. The authority conferred on those most concerned with 146
its circulation, to issue it in such amounts as would adapt it to the wants of the community is an additional evidence of an intention that the scrip should circulate as money.

The decision in these cases was reconsidered and affirmed in the case of *Gary, State Auditor, vs. Parker, State Treasurer, and others as County Treasurers* in June, *1873*, 4 S. C., 311, in which, by order of the Circuit Court, JOHN P. SOUTHERN and others, scripholders, were allowed to intervene as defendants.

In the case of *Poindexter vs. Greenhow*, (114 U. S., 283–285,) it was decided by this Court that the coupons of the bonds of 147
the State of Virginia were not "bills of credit" in the sense

of the Constitution of the United States, because, although issued by the State on its credit, and made receivable in payment of taxes, and negotiable, so as to pass from hand to hand by delivery merely, they were not intended to circulate as money between individuals and between Government and individuals, for the ordinary purposes of society. The definitions of "bills of credit," as determined in the cases of
148 *Craig vs. Missouri*, 4 Peters, 410; *Briscoe vs. Bank of Kentucky*, 11 Peters, 257, and *Darrington vs. Bank of Alabama*, 13 How., 12, are approved and applied:

"'Bills of credit signify a paper medium intended to circulate between individuals, and between government and individuals, for the ordinary purposes of society;' or as made more exact: 'The definition which does include all classes of bills of credit emitted by the Colonies or States is a paper issued by the sovereign power, containing a pledge of its faith, and designed to circulate as money;' and, again: 'To
149 constitute a bill of credit, within the Constitution, it must be issued by a State, on the faith of the State, and be designed to circulate as money. It must be a paper which circulates on the credit of the State, and is so received and used in the ordinary business of life.'"

The coupons were decided not to be bills of credit in the sense of the constitutional prohibition, because, although they are issued by the State, are promises to pay money, and their payment and redemption are based on the credit of the State; they were not issued by the State as a circulating medium or
150 paper currency—as a substitute for money. The grounds upon which this conclusion as to the absence of intention to make the coupons a paper currency, are:

1st. There is nothing on the face of the instrument;

2d. Nor in their form and nature;

3d. Nor in the terms of the law which authorizes their issue;

4th. Nor in the circumstances of their creation or use.

5th. Their being made receivable in payment of taxes is not sufficient to give them this character. They do not become
151 receivable in payment of taxes till they are due, and the design, we are bound to presume, was that they would be paid

at maturity. This necessarily excludes the idea that they were intended for circulation at all.

In what respects do the "South Carolina Treasury Certificates of Indebtedness, styled Revenue Bond Scrip," issued under the Act of 2d March, 1872, correspond with the Coupons of the Virginia Bonds, and in what respects do they differ?

They correspond in that they are acknowledgments of in- 152
debtedness, and obligations of the State; they are issued by the State in its sovereign character; they are made receivable for taxes, and their redemption is based entirely on the credit of the State, for, as pointed out in the case of *Darrington vs. Alabama*, (13 How., 12,) although it is provided that a fund for their redemption shall be raised by taxation, the application of the fund so raised rests upon the faith of the State.

They differ in the following particulars:

1st. They are not made payable at any specific time, or indeed made payable at all; but are only to be redeemed or 153
retired from year to year (as in the instruments construed to be bills of credit in *Craig vs. Missouri.*)

2d. They are made receivable in payment of taxes from the time of issue, before even they are required to be redeemed; therein unlike the coupons, which were not receivable for taxes until they are due.

3d. They do not bear interest, being therein unlike coupons, and like Bank or Treasury notes.

4th. They are not only made receivable for taxes, but after they have been so received, may be reissued in satisfaction of 154
all claims against the Treasury, (except for interest on the public debt.)

To determine whether these Treasury Certificates of Indebtedness, issued by the State of South Carolina, were intended to constitute a paper currency or circulating medium, constituting "bills of credit," apply to them the tests applied by the Court to the coupons of the Virginia bonds.

1st. The instruments on their face are bills receivable, or notes of the State of South Carolina.

2d. In their form and nature they correspond with the 155
usual paper currency of the country. They are in the similitude of bank notes and Treasury notes.

3d. The terms of the law, which authorized their issue; by the provisions as to form; by the power given to fix the amount (which was exercised so as to issue notes in as small a denomination as $1), by their not bearing interest, the placing them in the hands of the President of the Blue Ridge Railroad Company to take the place of the bonds of the Company, and to be used in paying the expenses of constructing
156 the road; the great volume of the issue, which necessitated its being kept in circulation to sustain its value; the provision for its re-issue from the Treasury so often as received, which was to make it circulate and keep it afloat—all indicate the intention to create a paper medium to circulate between individuals and between the government and individuals, and to perform all the functions of money.

4th. The circumstances of their creation and use, as shown in the opinion of Judge Willard, and of the Supreme Court, cited above, are confirmatory of the same intention.

157 5th. Their being made receivable in payment of taxes from the time of their issue and before they became redeemable.

6th. Penalties are provided for forgery of Scrip, in like manner as for bank and Treasury notes, as was the case in the Act construed in *Craig vs. Missouri*.

In the case of *The State vs. Cardozo, Treasurer*, (5 S. C., 297), decided in 1874, the decision in the case of *State ex rel Shiver vs. Hoge*, as "to bills of credit," is affirmed; but it was held that the "Certificates of Indebtedness," the subject of that
158 suit, were not bills of credit, although made receivable in payment of taxes, because the Act under which they were issued affords no evidence of the intention of the Legislature to create a currency or circulating medium. The certificates in no way increased the obligation of the State, and in fact only constituted another admission by the General Assembly of the particular debt, not paid by the certificate, but remaining due until its satisfaction was unconditionally acknowledged.

IV.

159 *The complainants are not entitled to the relief prayed, because they are not bona fide holders of the Revenue Bond Scrip received*

by them in exchange for Bonds of the Blue Ridge Railroad Company guaranteed by the State, they not having been bona fide holders of the bonds so exchanged.

The guaranty by the State of the bonds of the Blue Ridge Railroad Company was made by virtue of the Act of 1868, "*to authorize additional aid to the Blue Ridge Railroad Company in South Carolina.*"

1. If the object and intention of the Act was to create a 160
public debt of the State, it was void, because not passed by the vote of two-thirds of the members of each branch of the General Assembly, to be recorded by yeas and nays in the journals of each House respectively, and did not levy a tax annually, sufficient to pay the annual interest of such debt, as required by the Constitution of South Carolina. (Act IX, Sec. 7.)

2. The Legislature had not authority, under the Constitution of the State (Art. IX., Sec. 14), to create a debt in this form. [This will be discussed under the next point.] 161

3. The Act authorized the guaranty of the $3,000,000 of bonds only upon the express proviso that "the bonds shall *not be used*," unless upon the condition that Congress, or private capitalists, shall furnish $3,000,000, or so much as may be necessary in exchange, or upon the security of said bonds. This condition not having been performed, the guaranty of the State never took effect. All those purchasing the bonds of the Blue Ridge Railroad, purporting to be guaranteed by the State, were bound to take notice of the condition contained in the Act, which protected the bonds from being offer- 162
ed in the market *at an under rate*, and those who, like complainants, took them at such under rate, did not occupy the position of *bona fide* holders, without notice.

4. To remove this difficulty, the promoters of these schemes induced the Legislature to pass the Act of 1871 "*to promote the consolidation of the Greenville and Columbia Railroad Company and the Blue Ridge Railroad Company*," which contained a section repealing this proviso

The repeal of the proviso was part and parcel of the plan to consolidate the two Companies, and the failure of the main 163
object carried with it all the details.

This Act was considered by the Supreme Court of South Carolina in the case of *Gibbes vs. The Greenville and Columbia Railroad Company* (13 S. C., 228), and it was held that "the Act was never accepted by the Greenville and Columbia Railroad Company, or its creditors, and never went into operation in whole or in part; that it must be construed as a whole, and that the object of the Act having failed, each and all of
164 its parts also failed."

The proviso of the Act of 1868 was, therefore, never repealed.

5. The State of South Carolina having placed in the hands of the Blue Ridge Railroad Company, for the purpose of constructing its road, certain bonds, with its guaranty endorsed, with a condition attached to them, the object and effect of which were to prevent their being used until dollar for dollar could be had for them; no liability could accrue against the State upon such bonds until they were issued in pursuance of the
165 condition; and they were delivered in violation of the said condition.

6. The bonds having been issued, in violation of this condition, there was no liability of the State which could create a consideration for the redelivery of them to the State.

The contract of the State, which is claimed to exist, and which is sought to be enforced, is to issue a paper medium of $1,800,000, more than the whole currency required for the State, and which is made receivable for taxes and all other
166 dues to the State; and the effect of enforcing which will be to debase the currency of the State, subvert its financial system, and saddle its people with an enormous debt, for which it has received no equivalent.

And the only consideration claimed to support this contract is the re-delivery to the Treasury of the State, of the bonds illegally and fraudulently issued by the custodians who held them as trustees.

The complainants, who took the illegal Revenue Bond Scrip in exchange for the illegally issued bonds of the Blue
167 Ridge Railroad, which they had received with notice of the condition upon which alone they were to be used, and which

condition was violated, are not entitled to the relief which is granted to *bona fide holders* of negotiable securities.

The question whether there existed any liability of the State because of its guaranty of the bonds of the Blue Ridge Railroad Company, is determined by the question whether the President of the Blue Ridge Railroad Company had the authority to use the said bonds as he did, the condition precedent upon which alone they were to be used not having 168
been complied with.

The principles which apply to the transaction in question are clearly distinguishable from those which have been decided by this Court in relation to bonds issued by counties and municipalities. In these latter cases, it has been decided that where the authority to issue the bonds depends upon the fact of the performance of some condition precedent, as e. g., the vote of the electors of the County, if the bonds contain the recital of that fact, and such recital is made by the persons appointed to decide whether the necessary prerequisite to 169
their issue had been completed, their recital is such decision, and is equivalent to a representation or warranty or certificate on the part of the person so authorized, that every such fact necessary in law to have existed, did exist, to make the bond lawful and binding, and the obligors are estopped, by said recital, from denying the validity of the bonds. But even in such cases, "of course this does not extend to or cover matters of *law*. All parties are equally bound to know the law; and a certificate reciting the actual facts, and that thereby the bonds were conformable to law, when judicially speak- 170
ing they were not, will not make them so, nor can it work an estoppel."

(See *Field vs. County of Dixon*, 111 U. S., 83, in which all the preceding cases are reviewed.)

In the cases under consideration, the bonds used were the bonds of the Blue Ridge Railroad Company, which was the obligor; the Act of 1868 authorized the Comptroller-General of the State to endorse the guaranty of the State on said bonds, *provided* that said bonds, or any part thereof, shall not be used unless upon the express condition that, through the 171
Congress of the United States, or private capitalists, a cor-

responding amount shall be subscribed. The endorsement of the guaranty by the Comptroller-General necessarily preceded the use of the bonds by the President of the Blue Ridge Railroad Company. The Act was in legal effect a special or limited power of attorney by the State of South Carolina to the President of the Blue Ridge Railroad Company to use certain negotiable instruments for which it was contingently
172 liable, only upon the conditions and under the circumstances set forth in the Act which conferred the power. Those dealing with the agent knew that he was acting only by virtue of a delegated power, and were referred to the Act conferring the power. They were bound at their peril to determine whether the acts of the agent were within the scope of the power under which he acted.

The Act did not, as in the case of county bonds, appoint any one to decide that the facts constituting the condition precedent had been performed, and whose recital is such
173 decision.

Nor did the bonds so used contain any recital that such condition had been performed, nor even that such condition had been prescribed. On the contrary, the bonds, although they had endorsed on them "Guaranteed by the State of South Carolina, under the Acts of 1854 and 1868," and recited that, by an Act passed in 1854, the State had granted aid to the said Company upon certain specified conditions, and that said conditions were released by the said Act of 1868, which authorized the guaranty of its bonds, without compliance
174 with the conditions specified in the Act of 1854, *the proviso in the Act of 1868, upon which alone the bonds so guaranteed were to be used, is not mentioned.*

There was not only no recital that the condition precedent, prescribed by the Act of 1868, had been performed, but the fact that such condition existed was suppressed.

[A copy of one of the said Bonds, with the endorsements, is appended to this Brief.]

The principles which determine the authority of an agent to issue negotiable paper in the name of the State, are the
175 same as those which determine the authority of an agent who acts under the power of attorney of an individual.

"An individual may, instead of signing with his own hand, the notes and bills which he issues or accepts, appoint an agent to do these things for him. And this power may be a general power to draw or accept in all cases as fully as the principal could; or it may be a limited authority to draw or accept, under given circumstances, defined in the instrument which confers the powers. But in each case the person dealing with the agent, knowing that he acts only by virtue 176
of a delegated power, must, at his peril, see that the paper on which he relies, comes within the power under which the agent acts.

And this applies to every person who takes paper afterwards; for it is to be kept in mind that *the protection which commercial usage throws around negotiable paper, cannot be used to establish the authority by which it was originally issued.* These principles are well established in regard to the transactions of individuals. They are equally applicable to those of the government. Whenever negotiable paper is found in 177
the market, purporting to bind the government, it must necessarily be by the signature of an officer of the government, and the purchaser of such paper, whether the first holder or another, must, at his peril, see that the officer had authority to bind the government."

The Floyd Acceptances, 7 Wall., 666.

"The holder is bound to ascertain whether the law had been so far followed by the officers as to justify the issue of the bonds. The authority to contract must exist before any 178
protection as innocent purchaser can be claimed by the holders."

Marsh vs. Fulton County, 10 Wall., 683.

"The purchaser is bound to know the *law* conferring the power to issue bonds on the happening of a contingency."

Town of Coloma vs. Eaves, 92 U. S., 490.
Field vs. County of Dixon, 111 U. S., 83.

Nor can the complainants sustain the position, that when 179
receiving this Scrip from the State Treasurer and the Presi-

dent of the Blue Ridge Railroad Company they were only called on to examine the Act of 1872, and that said Act "was a recognition by the State of South Carolina that the use that had been made of those bonds was proper, and thereby admitted the State's liability for them."

The recitals of the Act of 1872 were only the declaration by the *Legislature* that *the existence* of the $4,000,000 of bonds
180 of the Blue Ridge Railroad Company, guaranteed under the provisions of the Act of 1868, created a liability upon the part of the State, which the Act proposed to meet by the issue of the Revenue Bond Scrip.

If the Act of 1868 was void, because not passed in accordance with the provisions of the Constitution of the State; or if by reason of the use made of these bonds by the Blue Ridge Railroad Company, in violation of the express condition upon which alone the Act authorized their use, the State did not incur a legal liability, as we have endeavored to show,
181 then the declaration of the *Legislature*, contrary to the law and facts, that such liability existed, did not and could not create such liability against the *State*.

The recital in the Act of 1872, that there existed a valid liability of the State, because of its guaranty of the Blue Ridge Railroad Bonds, was based upon the assumption that the provision, the compliance with which was a necessary condition precedent to the accrual of the liability, had been repealed, when in fact as well as in law it had not been repealed.

182 The complainants when they took the Revenue Bond Scrip issued under the Act of 1872, in exchange for the bonds issued under the Act of 1868, were again given notice by the recital of the Act of 1868 in the Act of 1872, that the liability of the State upon its guaranty of those bonds rested upon the provisions of the Act of 1868, which Act was not passed in accordance with the requirements of the Constitution, and an examination of which would have showed the condition upon which alone such guaranty was to take effect, and which condition had never been complied with or repealed.

183 If the guarantee of the State, endorsed by the Comptroller-General upon the bonds of the Blue Ridge Railroad Com-

pany, under the provisions of the Act of 1868, did not constitute a valid debt of the State, either because the said Act of 1868 was not passed in accordance with the provisions of the Constitution; or because of the non-performance of the express condition precedent prescribed in said Act, upon compliance with which only could the State become liable upon its guaranty; then the Legislature could not by the declaration in the Act of 2d March, 1872, that such antecedent 184
liability did exist, create a debt which would be binding upon the State by way of compromise or otherwise; for this would be to convert what was without legal authority into a valid obligation; and thus create a debt in a mode other than that authorized by the Constitution.

This would be to ignore the vital distinction between a *State* and the *Legislature* of a State, and to hold that the very body whose power to contract debt is restricted by the Constitutional provisos, could, by these means, evade and utterly disregard such restrictions. 185

(See *Bond Debt Cases*, 12 S. C., 201; *Whaley vs. Gaillard, County Treasurer*, 21 S. C., 560, and cases cited.)

V.

The Act of 2d March, 1872, is null and void, because in violation of the Constitution of the State of South Carolina.

The whole department of finance is settled by Article IX. of the State Constitution—"Finance and Taxation." The 186
expenses and expenditures of the State are divided into two classes—"ordinary" and "extraordinary." The provisions for ordinary expenses are contained in Sections 3 and 4.

The provisions in relation to extraordinary expenditures are as follows:

SEC. 7. "For the purpose of defraying extraordinary expenditures, the State may contract public debts; but such debts shall be authorized by law for some single object, to be 187
distinctly specified therein; and no such law shall take effect

until it shall have been passed by the vote of two-thirds of the members of each branch of the General Assembly, to be recorded by yeas and nays in the journals of each House respectively; and every such law shall levy a tax, annually, sufficient to pay the annual interest of such debt.

SEC. 10. No scrip, certificate, or other evidence of State indebtedness, shall be issued, except for the redemption of
188 stock, bonds, or other evidences of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution.

SEC. 14. Any debt contracted by the State shall be by loan on State bonds, of amounts not less than fifty dollars each, on interest payable within twenty years after the final passage of the law authorizing such debts. A correct registry of all such bonds shall be kept by the Treasurer in numerical order, so as always to exhibit the number and amount unpaid, and to whom severally payable.

189 These several sections have been construed by the Supreme Court of the State of South Carolina.

(See *State vs. Hayne*, 4 S. C., 403; *State vs. Columbia*, 6 S. C., 1; *The Bond Debt Cases*, 12 S. C., 200; *Whaley vs. Gaillard, County Treasurer*, 21 S. C., 560.)

1. The object proposed to be provided for by the Act of 1872, does not fall under the head of "extraordinary expenditures."

The declared object of the Act was to procure the cancelling of a guaranty by the State on certain bonds of the
190 Blue Ridge Railroad Company, and the redelivery of said bonds.

It is contended that it was to save the State from a liability, but a guaranty on a bond can in no sense be called an "expenditure," and the Legislature had no authority to create a debt by guaranty. Their power was limited to creating debt for expenditures, and there was no expenditure in the case.

We submit that the guaranty on the bonds of the Blue Ridge Railroad Company, authorized by the Act of 1868, was unconstitutional and void, and could form no ground of debt
191 or expenditure for the Act of 2d March, 1872, to operate upon.

2. Section 10 authorizes the issue of "scrip, certificate, or other evidence of State indebtedness," only for the redemption of stock, bonds, or other evidence of indebtedness "previously issued," or for such debts as are expressly authorized by the Constitution; the first clause refers to evidence of indebtedness issued previous to the adoption of the Constitution; second clause refers to debt other than such as was provided for in Section 7. 192

The guaranty of the State on the bonds of the Blue Ridge Railroad, not then due, even if constitutional, created only a contingent liability, not yet a debt—and cannot be considered evidence of indebtedness. So that the "scrip" was not for the redemption of stock, bonds, or other evidence of indebtedness previously issued, or authorized by the Constitution, and therefore cannot be sustained under Section 10.

3. The limitations as to the form of the debt prescribed in Section 14 are wholly disregarded. The scrip is not a bond, 193
but a bill receivable. It is for amounts less than $50: it is not on interest; it is not payable within twenty years from the passage of the law, and is not made payable at any date; it has not been registered by the Treasurer.

VI.

The other grounds against the constitutionality of the Act of 2d March, 1872, set out in the Answers of the defendants, 194
have relation rather to the *moral* than the *legal* aspects of the case.

As was said by the minority of this Court in the VIRGINIA COUPON CASES, (114 U. S., 338): "We have not thought it necessary or proper to make any remarks upon the moral aspects of the case. If any State has the prerogative of exemption from judicial prosecution, and of determining her own public policy with regard to the mode of redeeming her obligations, it is not for this Court, when considering the question of her constitutional rights, to pass any judgment 195
upon the propriety of her conduct on the one side or other;"

yet as the Law Officer of the State of South Carolina, whose official duty it is to represent the officers of the State who have been required by the decrees in these cases to violate her laws, and as one jealous of her honor and good faith, I hope it will not be considered unnecessary or improper for me to ask the Court to consider the moral aspects of these cases.

The mere mention of the names of those by whom these
196 schemes were originated, promoted and executed: NILES G. PARKER, State Treasurer; J. L. NEAGLE, Comptroller-General; H. H. KIMPTON, Financial Agent; JOHN J. PATTERSON, President of the Blue Ridge Railroad Company, the men who attained to such "bad eminence" in South Carolina during an era which has become historic, is sufficient to create the presumption of misrepresentation and corruption in procuring legislation which sought to fix this liability upon the State, and fraud in the use which was made by them of the fictitious securities issued thereunder.

197 In addition to the tribute which they levied from the State during their political lives, it is now sought to enforce the legacy of financial distress which they strove to fix upon the future generations of the people of the State which they plundered and left.

Although but a tithe has been told, enough appears upon the Records to show that the State of South Carolina is not seeking to repudiate or evade a just and legal obligation, but only to protect her citizens from the disastrous consequences which would ensue from a successful attempt to enforce an
198 alleged contract of the State for which there was no legal or actual consideration, and to compel, through the judicial process of the Courts of the United States, the officers of the State to do those things which the Legislative and Judicial Departments of the State have forbidden and enjoined them from doing.

The difference between these cases and the cases of *Louisiana vs. Jumel* and *Elliott vs. Wiltz*, in their moral aspects, is as marked as their identity in their legal.

In the case of Louisiana, not only would it "puzzle the wit
199 of man to find anywhere in the legislation of the world a more perfect assurance of the fixed purpose of a State to keep faith

with her creditors, of a pledge of a portion of her revenue for payment, or of her submission of her officers to the compulsory process of the judicial tribunals, if necessary, to carry out her engagement," (107 U. S., 731); but the State had received valuable and sufficient consideration to sustain her contract; while the State of South Carolina has received nothing which can be tortured into a sufficient consideration, either actual or legal, to support the obligations attempted to be foisted upon 200
her, and which are sought to be enforced by setting at naught her laws, and subverting her entire financial policy, despite the prompt, decisive and reiterated action of her Legislature and Courts in disavowing the legal obligation of the alleged contract.

VII.

The Acts of 22d October, 1873, and 22d December, 1873, which prevented the execution of the provisions of the Act of 2d March, 1872, were passed by the Legislature of South 201
Carolina after the Supreme Court of the State had declared that the said Act was unconstitutional and void, in proceedings to which one of the present complainants, J. P. Southern, and others, as the holders of the said Revenue Bond Scrip, were parties. (*Auditor vs. Treasurer*, 4 S. C., 311.)

They constitute part of the general policy and plan adopted by the State in the management of her finances.

If the Act of 2d March, 1872, is void, as we have endeavored to show in this argument, the Acts repealing its provisions, or inconsistent with them, are not unconstitutional and 202
void.

VIII.

The argument upon the assignment of errors in the orders of the Circuit Judge to carry the decrees into effect, has been somewhat anticipated in the foregoing argument upon the assignment of errors in the decrees.

It is only necessary to call attention to the following points:

1. The orders refer it to the Clerk of the Court, as Special Master, to ascertain and report the total amount of Revenue Bond Scrip outstanding; and that, upon the ascertainment of 203
the total amount outstanding, proper process do issue out of

and under the seal of the Court against the officers of the State, to enforce the decrees of the Court in relation to said Revenue Bond Scrip.

This process is presumably to be issued by the Clerk of the Court, who, as Special Master, is to ascertain the facts upon which the issuing of such process is based; and that before the report of said facts has been confirmed by or made
204 to the Court. It is also ordered that in case of refusal to so receive such scrip for taxes, injunction shall issue against any County Treasurer refusing to prevent the collection of the tax.

It is submitted, that the authority to issue the process of the Court can not be thus delegated.

2. The orders direct that the said process of the Court to enforce the decrees, shall issue against the Treasurer, Comptroller-General and County Auditors of the State for the time being, *and their successors in office.*

205 The attention of the Court is called to the fact, that when the decrees in these cases were filed, 15th May, 1882, the defendant, Johnson Hagood, who was Comptroller-General of the State when the bills were filed, (May and October, 1879,) and the defendant, S. L. Leaphart, who was then State Treasurer, had ceased to hold those offices. (See the Appeal Bonds, dated 10th July, 1882, and approved by the Circuit Judge, signed by "John Peter Richardson, as State Treasurer, and John Bratton, as Comptroller-General of South Carolina." (Records No. 108, p. 87, f. 135, and Record No. 109.
206 p. 97, f. 149.)

(All of the County Treasurers made defendants, except two, had also ceased to hold their offices when the decrees were filed, although this does not appear by the record.)

No order or motion to amend by substituting the successors in office of the defendants as parties was made in the Circuit Court, as was done by the complainants in their original suits. (Records, p. 80, f. 16; p. 75, f. 107.) But the Circuit Judge orders that process issue, directed to the Comptroller-General and the State Treasurer of the State of South
207 Carolina, and to the several County Treasurers, without naming them, and their successors in office.

If these are not suits against the State, but only against the defendants who were then officers of the State, to compel them to perform ministerial duties required of them by the laws of the State, then, we submit, that the suits abated when the defendants ceased to hold their respective offices; and the decrees cannot be enforced against their successors in office, as to whom there has been no demand or refusal, against whom no rule or other process has been issued, and 208
who have not been made parties to the proceedings.

This Court held, in the case of the *Secretary vs. McGarrahan* (9 Wall., 298–313), that "a judgment in *mandamus*, ordering the performance of an official duty against an officer as if yet in office, when, in fact, he had gone out after service of the writ and before judgment, is void. Such a judgment can not be executed against his successor."

In the case of the *United States vs. Boutwell* (17 Wall., 604), the Supreme Court of the District of Columbia refused a *mandamus*, and the case was brought by writ of error to this 209
Court. After the case was in this Court, Boutwell resigned as Secretary of the Treasury, and the motion was to substitute Richardson, his successor, in place of Boutwell.

This Court held, that in the absence of statutory provision to the contrary, a *mandamus* against an officer of the government abated on his death, or retirement from office. His successor in office can not be brought in by way of amendment of the proceedings, or an order for substitution of parties.

The Court also held, that any summons issued or rule upon R., requiring him to become a party, would be the exercise 210
of original jurisdiction over both a new party and a new cause, and this Court has only appellate jurisdiction.

The remedy invoked and granted in the present cases is by a mandatory decree and injunction against the officers of the State to compel their performance of the official duties required of them, which are alleged to be purely ministerial, and to involve no exercise of discretion.

"In such cases the writs of *mandamus* and injunction are somewhat correlative to each other." (*Board of Liquidation vs. McComb*, 92 U. S., 541.) And the same principles apply 211
as to *mandamus*. (*Cunningham vs. Macon & Brunswick*

R. R., 109 U. S., 453; *Allen vs. Baltimore and Ohio R. R.*, 114 U. S., 311.)

If these suits did not abate when the defendants made parties, ceased to hold their offices, and the decrees can be enforced against their successors in office, upon whom no demand has been made, and by whom there has been no refusal or failure, and upon whom no rule or order to appear
212 and answer has been made; it can only be because they are not the real parties, but only the agents and representatives of the real defendant party in interest, that is the State whose officers they were.

In *Commissioners vs. Sellew* (99 U. S., 624), it was held, that the service of copy of a writ of *mandamus* upon the Clerk of a Board of Commissioners of a County, was a service upon the County, because the County was a corporate body, amenable to suit, and the members of the Board of Commissioners who exercise the powers of the County, who fail to perform the
213 required act, are subject to punishment for contempt.

The Court say: "In *U. S. vs. Boutwell*, it was decided that as a *mandamus* was used to compel the performance of a duty resting upon the person to whom the writ is sent, if directed to a public officer, it abated on his death, or his retirement from office, because it could not reach the office. That principle does not apply to this case. There the officer proceeded against was the Secretary of the Treasury of the United States, and the writ was aimed exclusively against him as a person. Here the writ is sent against the Board of County
214 Commissioners, created and organized for the express purpose of performing the duty, among others, which the relator seeks to have enforced. * * * As the corporation can only act through its agents, the Courts will *operate upon the agents through the corporation.* * * * * One of the objects in creating such corporations capable of suing and being sued, and having perpetual succession, is that the very inconvenience which manifested itself in *Boutwell's* case may be avoided.

In this way the office can be reached, and the officer compelled to perform the duties, no matter what changes are
215 made in the agents by whom the office acts."

And in *Thompson vs. United States* (103 U. S., 480), it was

held, that the proceedings (by *mandamus*) against the clerk of a township to enforce its duty in levying the amount of a judgment against it, *are against the township*, and therefore do not abate by the resignation of the clerk and the appointment of his successor. Where the proceeding is to enforce the obligation of a corporation or municipality to which the office is attached, it does not abate by the expiration of the term of office of defendant. The proceedings may be commenced 216
with one set of officers and terminated with another, the latter being bound by the judgment. *The whole proceeding is really and in substance against the township.*

The cases in which it has been held by this Court that an abatement takes place by the expiration of the term of office have been those of officers of the government, whose alleged delinquency was personal, and did not involve any charge against the government whose officers they were. A proceeding against the government would not lie. See *Secretary vs. McGarrahan*, and *U. S. vs. Boutwell.*" 217

If these are not suits against the State, they have abated, and the decrees can not be enforced against the successors in office of the defendants, who are not parties.

If the suits have not abated, they are suits against the State, of which the Courts of the United States have not jurisdiction.

3. That E. B. Wesley, who holds the Revenue Bond Scrip which the assignees in bankruptcy of the Blue Ridge Railroad Company claim the right to redeem, is a necessary party to their suit, while he is only declared by the decree to be a party complainant to the suit of A. D. Williams, and 218
that by simply appearing and submitting his rights to the Court without motion and without rule or process being served upon him. (See Story's Eq., Plead, § 188. 1 Daniel's Chan., 260. 2 Hilliard on Mortgages, 315. *Dexter vs. Arnold*, 1 Sum. 109.)

CH. RICHARDSON MILES,
Attorney-General of South Carolina,
For Appellants.

APPENDIX.

Copy of Bond of the Blue Ridge Railroad Company.

UNITED STATES OF AMERICA.

219 *GUARANTEED BY THE STATE OF SOUTH CAROLINA UNDER ACTS OF 1854 AND 1868.*

$1,000	Or
in United States	£200
Gold Coin,	British Sterling.

No. 1. MORTGAGE LOAN $4,000,000. No. 1.

THE BLUE RIDGE RAILROAD COMPANY.

220 Comprehending the "Blue Ridge Railroad Company" in South Carolina, the "Blue Ridge Railroad Company" in Georgia, the "Tennessee River Railroad Company" in North Carolina, the "Knoxville and Charleston Railroad Company" in Tennessee, and the "Pendleton Railroad Company" in South Carolina, and extending by its connections from Charleston, South Carolina, to Knoxville, Tennessee.

Whereas, the General Assembly of South Carolina, by an Act passed on the twenty-first day of December, eighteen hundred and fifty-four, entitled an Act to authorize aid to the
221 "Blue Ridge Railroad Company in South Carolina," provided that the faith and funds of the State of South Carolina be, and the same are hereby pledged to secure the punctual payment of any contracts which shall be made for borrowing money by the "Blue Ridge Railroad Company in South Carolina," from any persons, companies or corporations, to any amount not exceeding one million of dollars; and when such contracts shall be made by bond or bonds, signed by the President of the Company, under its seal, and countersigned by the Secretary or Treasurer thereof, it shall be the duty of the Comp-
222 troller-General to endorse thereon that the faith and funds of the State are pledged to the faithful performance of said con-

tract or contracts, as it respects the punctual payment both of the principal and interest, according to the terms of said contract or contracts: *Provided*, That certain conditions particularly recited in Section seven of said Act be first executed, and the several Companies above mentioned secure the said endorsement by a mortgage of all their property in the States of South Carolina, Georgia, North Carolina and Tennessee, duly executed and recorded: 223

And whereas, by another Act of the General Assembly of South Carolina, approved on the sixteenth day of September, eighteen hundred and sixty-eight, the said conditions recited in the seventh Section of the first mentioned Act have been released, and it is enacted that without reference to the said provisos and conditions, whenever any contract may be made by the President of said Company under its seal, and as provided by said Act, and not exceeding four millions of dollars, it shall be the duty of the Comptroller-General to endorse thereon that the faith and funds of the State are pledged 224 to the faithful performance of said contract or contracts, as respects the punctual payment both of the principal and interest, according to the terms of said contract or contracts:

And whereas, a mortgage hath been duly executed by the several Companies before named, to secure said four million loan, and this bond is one among those protected thereby,

Now, know all men by these presents, That the Blue Ridge Railroad Company, in South Carolina, will pay to the holder of this bond, on presentation of the same, at either of the agencies of said Company, in New York, Charleston, or London, 225 at the expiration of twenty years from the date hereof, one thousand dollars in American gold coin, if presented at either of the Agencies in the United States, or two hundred pounds sterling at the Agency in London, at the option of the holder, interest thereon to be paid semi annually, at the rate of seven per cent. per annum, on the first day of January and July of each year, at either of the above agencies, upon presentation of the annexed coupons or warrants for thirty-five dollars American gold coin, if presented at either of the Agencies in the United States, or seven pounds sterling in London, each 226 at option of the holder.

In testimony whereof the said Company has hereunto caused to be affixed its corporate seal and these presents to be subscribed by its President and countersigned by its Secretary this first day of July, 1869.

J. W. HARRISON, *President.*

W. H. D. GAILLARD, *Secretary.*

[Corporate Seal.]

227 INDORSEMENTS.

We, Henry Clews, of the City of New York, and Henry Gourdin and George S. Cameron, of the City of Charleston, S. C., hereby certify that the Blue Ridge Railroad Company, in South Carolina, and the several Railroad Companies herein named, have executed to us a deed of trust or mortgage, purporting to convey their several roads and their appurtenances, with all the rights and franchises, property and privileges of said Companies, as specified in the instrument, in trust for the benefit of the holders of the bonds of the Blue Ridge Rail-
228 road Company, in South Carolina, of similar tenor as the foregoing, to an amount not exceeding in all four million dollars, with power to take possession of, use or sell the same, or any part thereof, after a default in paying the interest or principal of the said bonds, or any of them, and that the foregoing is one of the several bonds described in and secured by said deed or mortgage; and that we have caused the said deed to be recorded in the proper offices of the States of "South Carolina," "Georgia," "North Carolina," and "Tennessee."

229 HENRY CLEWS.
H. GOURDIN,
GEO. S. CAMERON, } *Trustees.*

COMPTROLLER-GENERAL'S OFFICE,
COLUMBIA, S. C., May 2d, A. D. 1870.

Whereas, by Acts of the General Assembly of the State of South Carolina, passed on the twenty-first day of December, eighteen hundred and fifty-four, and the sixteenth day of Sep-
230 tember eighteen hundred and sixty-eight, respectively, the Comptroller-General is authorized and directed to endorse the

guarantee of the State upon the bonds of the Blue Ridge Railroad Company, in South Carolina.

Now, therefore, I, J. L. Neagle, Comptroller-General of the State of South Carolina, by virtue of the authority vested in me by the Acts aforesaid, do hereby endorse this bond, and pledge the faith and funds of the State of South Carolina for the payment of the principal of the within bond, and the interest that may accrue thereon, as therein stipulated. 231

In testimony whereof, I have hereunto set my hand as Comptroller-General, on the day and date above written.

J. L. NEAGLE,
Comptroller-General.

CERTIFICATE OF CLERK OF DISTRICT COURT OF UNITED STATES.

UNITED STATES OF AMERICA. 232

DISTRICT OF SOUTH CAROLINA, } *In Clerk's Office.*
IN THE DISTRICT COURT. }

IN THE MATTER OF
THE BLUE RIDGE RAILROAD COMPANY—BANKRUPT.

I, Ephraim M. Seabrook, Clerk of the District Court of the 233
United States for the District of South Carolina, do hereby certify that, by orders made in the above entitled proceedings in Bankruptcy, on file in this Court, it appears:

That the entire property of the Blue Ridge Railroad Company, the Bankrupt, was ordered to be sold, by the Assignees in Bankruptcy, on the 14th day of May, 1874, by order dated 4th day of February, 1874.

That the sale was postponed to 22d day of October, 1874, by order dated 14th day of May, 1874.

That the entire property was purchased at the sale on the 234
22d day of October, 1874, by R. K. Scott, for $50,000.

That the bond of the purchaser was approved, by order made second day of November, 1874.

That the sale was confirmed, and ordered to be carried into effect, by order of Hon. H. L. Bond, Circuit Judge, upon appeal to the supervisory jurisdiction of the Circuit Court, dated 17th December, 1875.

That Hamlin Beattie was appointed Assignee in place of
235 Geo. W. Williams (discharged by order of 9th of July, 1875), and R. L. McCaughrin was appointed Assignee in place of J. L. Low, by order dated 26th August, 1879. That the acceptance of R. L. McCaughrin was filed 30th of August, 1879; and the acceptance of Hamlin Beattie was filed 10th day of September, 1879.

In witness whereof, I have hereunto set my hand and the seal of the said Court, this first day of October, A. D. 1885, in the year of our Lord one thousand eight hundred and eighty-five; and of the Independence of the United States of
236 America, the 110th year. E. M. SEABROOK,
C. D. C., U. S., S. C.

[Official Seal.]

COPIES OF REVENUE BOND SCRIP.

"Original Scrip."

237

ONE HUNDRED DOLLARS. ONE HUNDRED DOLLARS.

$100 *No. 21.* **$100**

Revenue Bond Scrip.

(Palmetto Tree.)

The State of South Carolina.

Columbia, S. C., March ——, 1872.

Receivable as One Hundred Dollars in payment of all taxes and dues to the State; except special tax levied to pay interest on public debt.

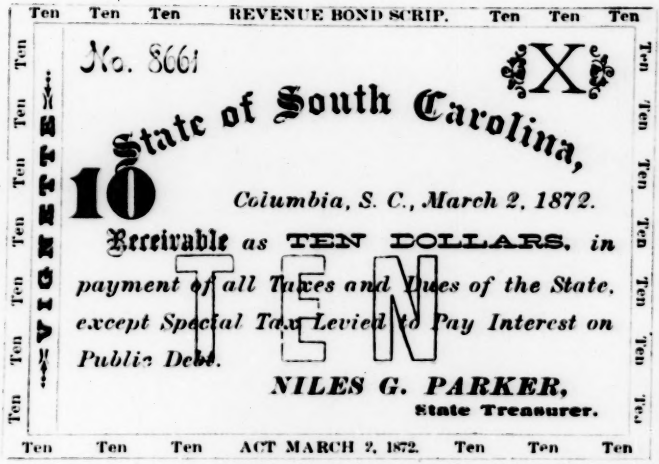
NILES G. PARKER.
State Treasurer.

ONE HUNDRED DOLLARS. ONE HUNDRED DOLLARS.

ONE HUNDRED DOLLARS. ACT 14 MARCH, 1872.

ONE HUNDRED DOLLARS. ACT 14 MARCH, 1872.

Washington Scrip.



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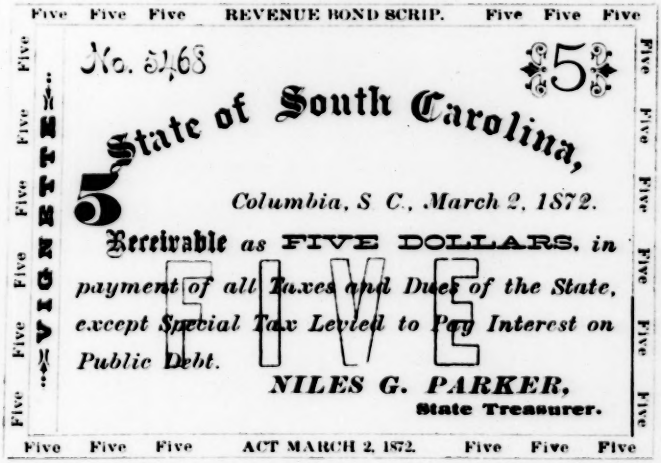

240

Endorsed.

FIVE. Issued under an Act to relieve the State of South Carolina of all liability for its guarantee of the Bonds of the Blue Ridge Railroad Company, by providing for the securing and destruction of the same. FIVE.

March 2, 1872.

241

117-52

OFFICE SUPREME COURT U. S.
FILED
NOV 25 1885
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

JOHNSON HAGOOD, Comptroller-General of the State of South Carolina; R. S. PORCHER, County Treasurer of Oconee County; and SAMUEL E. MOORE, County Treasurer of Anderson County,

Appellants,

vs.

JOHN P. SOUTHERN and JAMES P. LOW, Assignees of the Blue Ridge Railway Company, in South Carolina, a Bankrupt,

Appellees.

No. 108 on October Term, 1885.

JOHNSON HAGOOD, Comptroller-General of the State of South Carolina; S. L. LEAPHART, Treasurer of the State of South Carolina; P. C. GAILLARD, County Treasurer of Charleston County; W. H. GIBBES, County Treasurer of Richland County; H. F. ALEXANDER, County Treasurer of Oconee County;

No. 109 on October Term, 1885.

and WILLIAM MCGUKIN, County Treasurer of Anderson County,
Appellants,

against

AMOS D. WILLIAMS,
Appellee.

Brief of Counsel for Above-named Appellee.

Statement.

These causes come up on appeal from the decree of the United States Circuit Court, held at Charleston, in and for the Fourth Circuit.

The causes were tried together on the same evidence but on different pleadings, at Charleston, in the April Term, 1881 (fol. 129. Transcript of Record in Williams' Case.)

The decree was joint and was rendered on the 15th day of May, 1882. (Fol. 115, same record.)

The Court below found the following facts and conclusions of law, viz:

Conclusions of Fact.

I.—That an act was passed by the Legislature of South Carolina on March 2, 1872, in which, reciting that that State had previously endorsed their guaranty on $4,000,000 of bonds of the Blue Ridge Railroad Company. That many of said bonds were pledged in Wall Street, New York City. That said State might be called upon at inopportune times to pay for the same, the said Legislature did

provide that the State Treasurer of South Carolina should devise the form of a certificate to be issued, to be styled Revenue Bond Scrip, which scrip would entitle the holder *to have the same received in payment of taxes levied by the State*, except the special tax levied to pay interest on the public debt That not more than $1,800,000 of said scrip should be issued in all, and then the same should only be issued in proportion to the amount of bonds redeemed and returned to the said State Treasurer for cancellation (fol. 134.) 9 10

II.—That under said act the State Treasurer did devise the form of and issued said scrip, and in company with the President of the Blue Ridge Railroad Company, in latter part of March, 1872, came to the City of New York, and said Edward B. Wesley, a banker in Wall Street, and Amos D. Williams, one of the above complainants, a member of the Stock Exchange, the latter of whom before that time had purchased in open market in Wall Street $417,000 of the aforesaid bonds guaranteed by the State. The former of whom owned none of said bonds (fol. 135.) 11

III.—That relying upon the faith of the provisions of the said act of March 2d, 1872, and on the representations of the State Treasurer of South Carolina and of the President of the Blue Ridge Railroad Company, the complainant Amos D. Williams was induced to surrender his $417,000 of the above guaranteed bonds and to take in payment therefor $165,000 of said Revenue Bond Scrip. And said Edward B. Wesley was also induced by the said representations of the said State Treasurer and of said President of said Blue Ridge Railroad Com- 12

pany to advance in cash in the City of New York $344,925 in the latter part of March, 1872, and he received as security for such advances Revenue Bond Scrip to the amount of $1,000,005.

With the money thus advanced the President of the Blue Ridge Railroad Company was enabled to redeem $2,902,000 of the bonds of the Blue Ridge Railroad Company then lying under pledge in Wall Street in the City of New York, having the guaranty of the State of South Carolina thereon.

This redemption enabled the President of the Blue Ridge Railroad Company to carry out to that extent the provisions of the Act of March 2, 1872.

Thereby the complainant Amos D. Williams became a *bona fide* holder of $165,000 of said Revenue Bond Scrip and the Blue Ridge Railroad Company became *bona fide* holder of $1,005,000 of said Revenue Bond Scrip subject to the lien of Edward B. Wesley for the sum of $344,925, with interest thereon, from March 2d, 1872, upon the payment of which sum and the discharge of which lien the equity in said Revenue Bond Scrip is in the assignees in Bankruptcy of said Blue Ridge Railroad Company. (Fols. 135 to 137).

IV.—That on the faith of said Revenue Bond Scrip, in addition to the surrender and cancellation of the aforesaid amount of Bonds, the Blue Ridge Railroad Company procured to be surrendered to the aforesaid State Treasurer the remainder of said $4,000,000 of bonds, with the exception of about $4,000 dollars (137).

V.—On the 22d day of October, 1873, the Legislature of South Carolina passed an Act wherein and whereby they expressly forbade the Comp-

troller General of said State to ley the tax provided for in the Act of March 2, 1872, for the redemption of said Revenue Bond Scrip (137.)

VI.—On the 22d day of December, 1873, the said Legislature passed an Act wherein they forbade any State or County officer to accept payment of taxes in said Revenue Bond Scrip (138).

VII.—Since the passage of said two Acts, the State officers of South Carolina have totally refused to levy the tax provided to be levied under and by provisions of the Act of March 2, 1872. They have also refused to take the necessary steps for such purpose—although due demand before the commencement of said suits has been made on such State officers by and on behalf of the said complainants and the said Edward B. Wesley (138).

VIII.—Since the passage of said two last mentioned Acts the said State officers have refused to receive from the Blue Ridge Railroad Company, and from the Assignees in Bankruptcy of the said corporation, the said Revenue Bond Scrip in payment of the taxes, except special tax levied to pay interest on the public debt due the State by the said corporation and by said Assignees in Bankruptcy, although the said Revenue Bond Scrip has been duly tendered to the said State officers in payment of said taxes by said Blue Ridge Railroad Company, and said Assignee in Bankruptcy (138).

21

Conclusions of Law.

I.—The Act of March 2, 1872, was a lawful and constitutional act under the Constitution of the United States, and a lawful exercise of such authority under the State (139).

The said Revenue Bond Scrip, so far as the present holders of said Scrip, to-wit: Edward B. Wesley and Amos D. Williams and such other parties
22 and corporations as appear by the proofs to have lawfully acquired same are concerned are lawful and constitutional securities in the hands of the holders thereof, and not bills of credit within the purview of the Constitution of the United States (139).

II.—That the said act of March 2, 1872, was a valid and binding contract between the State of South Carolina and the different owners and holders of
23 the Revenue Bond Scrip and bound said State and its different officers to do and perform the duties cast upon them by said act to be performed in such manner as by said statute is provided and directed (140).

III.—The third conclusion of law is a repetition in terms of the third conclusion of fact, showing that in law both Williams and Wesley are legal and bona fide holders of the Revenue Bond Scrip to
24 the respective amounts set forth in the third conclusion of fact, and the assignees of the Blue Ridge Railroad own the equity of the $1,005,000 of Scrip after paying off the lien of Wesley (140 to 142).

IV.—That the acts of Oct. 22, 1873, and of Dec. 22, 1873, were and each of them was passed in vio-

lation of the contract entere
the complainants and the St
and that they are respectivel
void (fol. 142).

Upon these findings, both
Circuit Court below made the

I.—A reference to a specia
of claims of all parties oth
Wesley (*whose claims are*
established) holding or claim
said Revenue Bond Scrip be
who may on contributing pr
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II.—That the State of So
its option, be allowed, on t
Attorney General, to be made
ceedings (fol. 143).

III.—Upon the ascertainir
Treasury Certificates of Ind

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21

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24 the respective amounts set forth in the third conclusion of fact, and the assignees of the Blue Ridge Railroad own the equity of the $1,005,000 of Scrip after paying off the lien of Wesley (140 to 142).

IV.—That the acts of Oct. 22, 1873, and of Dec. 22, 1873, were and each of them was passed in vio-

lation of the contract entered into by and between 25
the complainants and the State of South Carolina, and that they are respectively unconstitutional and void (fol. 142).

Upon these findings, both of law and fact, the Circuit Court below made the following decree:

I.—A reference to a special master to take proof of claims of all parties other than Williams and Wesley (*whose claims are thereby declared to be established*) holding or claiming to hold any of the said Revenue Bond Scrip bona fide and for value who may on contributing pro rata to the expenses of the Reference and of the action prove their claims. 26

And that the special master do ascertain and report the total outstanding amount of such Treasury Certificates of Indebtedness (fol. 143).

27

II.—That the State of South Carolina may, at its option, be allowed, on the application of its Attorney General, to be made a party to these proceedings (fol. 143).

III.—Upon the ascertaining the amount of said Treasury Certificates of Indebtedness proper process issue out of and under the seal of the Court against the State Treasurer and his successors in office, compelling and requiring him and them to perform the duties enjoined upon the incumbent of that office by the fourth section of the act of March 2, 1872, to-wit: *to redeem the Treasury Certificates of Indebtedness.* 28

Compelling and requiring him and them *to receive the same in payment of all taxes and other*

dues to the State except the special tax levied to pay interest on the public debt.

That proper process issue out of and under the seal of the Court against the Comptroller General of the State of South Carolina, and his successor, compelling him and them *to perform the duties enjoined upon that office by the different sections of the Act of March*, 1872. Compelling and requiring him from time to time to *prepare and transmit to the several county auditors all such forms and instructions as may be proper and lawful for levying and collecting in the same manner as the annual taxes* the taxes *required by the 4th section of the Act of March 24*, 1872. That proper process do issue out of and under the seal of the Court, compelling and requiring the different county treasurers of the State of South Carolina for the time being, and their successors *to receive, such Treasury certificates of indebtedness in payment of all taxes due the State of South Carolina, except the special tax levied to pay the interest on the public debt.*

In all cases where a tender of such treasury certificates of indebtedness is made, and the same refused, an injunction may issue *restraining the county treasurer so refusing from selling property or in any manner enforcing payment of said taxes.* (Fols. 143-5).

Leave is reserved at the foot of the decree for further directions. (Fol. 145).

From this decree appeals were taken to this Court, and the two cases at bar are such appeals.

History of the Proceedings in the said Causes.

The assignee's cause had originally been tried in South Carolina, at the May Term, 1875, by the U.

S. Circuit Court, at Charleston, Hon. M. R. Waite, 33
the Chief Justice, presiding (Fol. 110, Transcript of Record in assignee's case).

It was dismissed, the following opinion being delivered:

"Upon the hearing of this case, and upon its
"appearing to the Court that the judgment in the
"State Court, to which Mr. Wesley was a party,
"concluded the rights of the complainant in this
"case, it is ordered, that the bill be dismissed, with 34
"costs, and that the injunction heretofore granted
"be dissolved." (Fol. 110, same record).

Appeal was taken from that decision to the Supreme Court of United States, and was argued at the October Term, 1878, by Dennis McMahon, Esqr. of counsel for the appellants, and by Mr. L. F. Youmans, Attorney General of South Carolina for the appellees. Neither in the return 35
made nor on the argument of such appeal was any evidence of any such State Court judgment produced. The Attorney General when questioned by the appellate Court on the argument respecting said judgment, admitted that he had telegraphed from Washington to Columbia to ascertain, and he there held a reply showing that Mr. Wesley was not a party to the case referred to on said argument (hereinafter referred to as Garry *v.* the State Auditor, reported in 4th South Corolina Supreme Court Reports p. 311). 36

This Court on such appeal, after advisement, reversed the judgment, delivering the opinion set forth on page 1 of the present transcript of the Record in the assignee's case.

On the new trial, in which the present decree was made, no attempt was made to prove any such adjudication in any State Court *in which Mr. Wesley*

was a party—none such in fact existed—Mr. Wesly was present on the hearing of the case below, with his scrip, which he had in open Court, and submitted his rights to the Court. See clerk's minutes of said trial, fol. 115 of the Transcript of the Record in assignee's case.

The Williams case was tried also at the May term of the United States Circuit Court, 1875, Chief Justice Waite presiding; his case was "dismissed for want of equity." Appeal was also taken (fol. 125, Transcript of record in Williams' case) from such dismissal to the Supreme Court of the United States (fol. 126, same record) was argued at the October term, 1878, and was "dismissed without prejudice to his right to bring and prosecute another suit when he shall be in a condition to establish an equity in himself" (fol. 2), the Court delivering an opinion (the case is fully reported in 98 U. S. R., p. 72). The opinion appearing on p. 53 of the Transcript of the Record in the Williams' case.

From that opinion we quote the following language: "This legislation" (the Court having previously alluded to the legislative acts of S. Ca.), "*was manifestly inconsistent with the undertaking of the State expressed in the act of March 2, 1872, and in the Revenue Bond Scrip issued thereunder*, and its constitutionality and obligatory force would be a legitimate subject for consideration if the complainant had placed himself in a position to invoke our judgment. But he has not. His bill does not aver that he has been injured or will be injured by this legislation, or by any act or neglect of the Comptroller General or the County Treasurer. It does not aver that the Comptroller General has neglected or refused to perform every duty imposed on him by the

"Statute, under which the revenue bond scrip was 41
"issued, nor even that he threatens such neglect or
"refusal. It does not aver that the County Treas-
"urer has refused or even threatens to refuse re-
"ceiving the complainants scrip, or any scrip, in
"payment of taxes or dues to the State other than
"taxes, levied to pay the interest on the State
"debt."

"*It does not aver any demand from the State*
"*Treasury, or any tender to the County Treas-*
"*urer.*" 42

Fols. 79 and 80, Transcript of record in Williams' case.

Mr. Williams, acting upon the light given to him by the decision of the Appellate Court, paid the costs of his said suit, made the prescribed tenders and demands to and of the Comptroller, State Treasurer, and other officials, and commenced a new suit against the same officials, averring the matter of the old bill of complaint, together with such new 43
matter as brought him, we claim, *rectus in curia*. He gave new and additional proof, and upon the proofs given in the original case, with the new proofs, and on a thoroughly revised and improved bill of complaint said case was tried and decided below, and is now before this Court on appeal.

The assignees in bankruptcy of the Blue Ridge Railroad Company, after the reversal in the case, amended their bill of complaint in several very important particulars, and made tenders of the Wesley 44
Scrip, and on the new case thus made out, took the same proofs as in the old, and in the present Williams' case, and with some additional proofs peculiar to their case, presented themselves before the Court below, and obtained the decree now on appeal before this Court.

45

Historical Statement of the Williams' Case from the Evidence.

A. D. WILLIAMS, the complainant, a member of the Stock Exchange in the city of New York, had purchased in the Stock Exchange of New York, in the regular way, in open market, during the early part of 1872, $417,000 worth of bonds issued by the Blue Ridge Railroad Company in South Carolina,
46 on which was indorsed a guaranty of their payment by the State of South Carolina (*fols.* 49 and 50, also 36.) Transcript of Record in Williams' case.

These bonds had been issued by the Railroad Company, and guaranteed by the State of South Carolina, under and pursuant to the provisions of the Act of the Legislature of South Carolina, approved September 15, 1868, entitled "An Act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina" (*fols.* 81 to 84).
47 Transcript of Record in Williams' case. Answer sets up the Act of 1868 (*fols.* 26 to 28). Same Record.

Under this latter Act, about $4,000,000 of railroad bonds had been issued, with the guarantee of the State of South Carolina on them, and, with the exception of $600,000 in amount, had principally gotten into the hands of parties who had made loans to the company, and held said bonds as collateral, or who held them for debts due by the com-
48 pany (*fols.* 66, 67). Transcript of Record in Williams' case.

The State of South Carolina desired to retire them at a low rate.

This was difficult to do, as on their face they were an express lien on the railroad in question, and on them was indorsed the express guaranty of the

State of South Carolina for their payment (*fol.* 82). 49
Transcript in Williams' case.

To retire these bonds the Legislature of the State of South Carolina passed the following Act, viz.: (See the substance of the Act in the bill of Complaint (*fols.* 7 to 8), in Transcript of Williams' case.) The passage of this Act is admitted (see answer, *fol.* 25). Same Record. Its validity is denied (answer, *fol.* 24).

The Act is as follows (Laws of South Carolina, 50
15th vol., p. 79); and is set forth at length in p. 60, 61 and 62 of Transcript of Record in Williams' case, also on pp. 53 to 56, of Transcript in Assignee's case.

AN ACT to relieve the State of South Carolina of all liability for its guarantee of the bonds of the Blue Ridge Railroad Company, by providing for the securing and destruction of the same.

Whereas, the State of South Carolina has by 51
and in pursuance of the provisions of an Act approved the fifteenth day of September A. D., 1868, entitled, "An Act to authorize additional aid to the Blue Ridge Railroad Company, in South Carolina," indorsed a guarantee of the faith and credit of the State on four millions of dollars of Bonds, issued by the said Blue Ridge Railroad Company, comprehending the Blue Ridge Railroad Company in South Carolina; the Blue Ridge Railroad Company in Georgia; the Tennessee River Railroad Company in 52
North Carolina; the Knoxville and Charleston Railroad Company in Tennessee, and the Pendleton Railroad Company in South Carolina, for the purpose of aiding the speedy completion of the said railroad, which bonds are liable for the debts of the said railroad companies; and whereas, the present condition of the finances of the State, and of said

companies, are such as to make the further continuance of said bonds on the market inexpedient and unadvisable, and a serious injury and prejudice to the credit of the State; and whereas, the existence of the said four millions of dollars of bonds, so guaranteed, creates a large liability upon the part of the State, which the Treasurer may be required to meet at unforeseen and inopportune times; and whereas, the liability of the State, on account of such guaranty, should be faithfully met and discharged; therefore, in order to secure *the recovery and destruction* of the bonds and coupons of the said company, issued under and in pursuance of the provisions of the aforesaid Act, *now pledged in the City of New York and elsewhere*, and to relieve the State of all liabilities whatsoever, by reason of its endorsement and guaranty of said bonds:

SEC. 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by authority of the same, that the State Treasurer is hereby directed, with the consent, in writing, of the President of the Blue Ridge Railroad Company, in South Carolina, to require the financial agent of the State, in the City of New York, immediately to deliver to the State Treasurer all the bonds of the Blue Ridge Railroad Company, endorsed and guaranteed by the State of South Carolina, which are now in his possession, and held by him as collateral security, for advances made by the said financial agent, by the order of the financial board, to the Blue Ridge Railroad Company; and upon the delivery of said Bonds, the treasurer is hereby required to cancel the same, in the manner hereinafter directed; and the said Blue Ridge Railroad Company shall thereupon be discharged from all liability to the State on account of such advances.

SEC. 2. That upon the surrender by the said company to the State Treasurer, of the balance of the said four millions of dollars of bonds, issued by the said Blue Ridge Railroad Company, and guaranteed by the State, the State Treasurer is hereby authorized and required to deliver to the president of the Blue Ridge Railroad Company, in South Carolina, treasury certificates of indebtedness (style revenue bond scrip), to the amount of one million eight hundred thousand dollars, the said certificates to be executed in the manner hereinafter directed; and if the said company shall not be able to deliver all of said bonds at one time, *the treasurer is authorized and required to deliver to the said president such amount of such treasury certificates as shall be proportioned to the amount of bonds delivered.*

SEC. 3. That to carry out the purposes of this act the State Treasurer is hereby authorized and required to have printed, or engraved on steel, as soon as practicable, treasury certificates of indebtedness, to be known and designated as revenue bond scrip of the State of South Carolina, in such form and of such denomination as may be determined on by the State Treasurer and the President of the Blue Ridge Railroad Company, in South Carolina, to the amount of one million eight hundred thousand dollars; which revenue bond scrip shall be signed by the State Treasurer, and shall express that the sum mentioned therein is due by the State of South Carolina to the bearer thereof, and that the same will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

SEC. 4. That the faith and funds of the State are hereby pledged for the ultimate redemption of said

revenue bond scrip, and the county treasurers are hereby required *to receive the same in payment of all taxes levied by the State, except in payment of special tax levied to pay interest on the public debt;* and the State Treasurer and all other public officers are hereby required to receive the same in payment of all dues to the State; and, still further to provide for the redemption of said revenue bond scrip, an annual tax of three mills on the dollar, in addition to all other taxes, on the assessed value of all taxable property in the State, *is hereby levied*, to be collected in the same manner, and at the same time, as may be provided by law for the levy and the collection of the regular annual taxes of the State; and the State Treasurer is hereby required to retire, at the end of each year from their date, one-fourth of the amount of the treasurer's scrip hereby authorized to be issued, until all of it shall be retired, and to apply to such purpose exclusively the taxes hereby required to be levied.

SEC. 5. That if any such revenue bond scrip is received in the treasury for the payment of taxes, the treasurer be, and he is hereby authorized to pay out such revenue bond scrip in satisfaction of any claims against the treasury, except for interest that may be due on the public debt.

SEC. 6. That upon the delivery to the State Treasurer of the said guaranteed bonds of the Blue Ridge Railroad Company, or any part of them, the Treasurer is hereby required to cause the same to be canceled and destroyed, in the presence of the President of the Blue Ridge Railroad Company, in South Carolina, and in the presence of a joint committee of the Senate and House of Representatives of this State, to be for that purpose appointed.

SEC. 7. That whenever the whole number of the said guaranteed bonds shall have been delivered to the Treasurer as canceled, as required by the provisions of this Act, the lien of the State of South Carolina upon the estate, property and funds of the said Blue Ridge Railroad Company, in this State and of the other associated companies in the States of Georgia, North Carolina and Tennessee, as secured by the provisions of an Act entitled, "An Act to authorize additional aid to the Blue Ridge Railroad Company, in South Carolina," passed on the fifteenth day of September, Anno Domini one thousand eight hundred and sixty-eight, and all other claims or liens which are held by the State against said company or companies, on account of said guaranty, shall, from thenceforth, be forever discharged and released; and should the said company be unable, from any cause, to deliver all of said bonds, *such liens shall be discharged and released to an extent which shall be proportional to the amount of such bonds actually delivered.*

SEC. 8. That if the said company shall accept the provisions of this Act, it shall be authorized, if the Board of Directors may desire, to change the corporate name of the Company to that of the "Knoxville and South Carolina Railroad Company," and shall have power to extend its railroad, or to construct branches thereof, to any points or places in this State, with all the powers and privileges with which the said Company is now vested by the provisions of its charter; and the said Company shall have power to issue bonds and to secure the same by a mortgage, to such amount and in such manner as the Board of Directors may direct. And all sales of stock in the said Blue Ridge Railroad Company, in South Carolina, and its associate companies, formerly held by the State and sold by the

69 Commissioners of the sinking fund, be, and they are hereby confirmed.

SEC. 9. That if any person shall forge or counterfeit the treasury scrip hereby authorized to be issued, or shall directly or indirectly aid or assist in the forging or counterfeiting of such scrip, or shall issue, or in any manner use any such forged or counterfeit scrip, he shall, on conviction thereof, be fined, in the discretion of the Court, and shall be
70 imprisoned in the penitentiary for a term not exceeding ten years.

Under and pursuant to this act the Treasurer of the State of South Carolina caused to be prepared an issue of certificates of indebtedness, viz:

1st. An issue made directly after the passage of the act as aforesaid, and known as the printed or original scrip.

The whole of this first class of certificates of in-
71 debtedness was issued by the State Treasurer, Niles G. Parker, less the *pro rata* amount necessary to redeem $4,000 of the bonds of the Blue Ridge Railroad Company, in South Carolina, then in the hands of the Trustees of the said Blue Ridge Railroad Company, as was supposed (fol. 64 Transcript in Williams' case).

Then he caused to be prepared and engraved by the American Bank Note Company of New York an engraved scrip (fol. 64). Of this second class
72 enough was issued *in exchange for the same amount of the original or printed certificates of indebtedness, which were canceled* (fols. 64 & 65, and Van Zandt's testimony, fols. 63-4, same record).

The certificates ordered by the State Treasurer to be engraved by the American Bank Note Company were to take the place of the original printed certificates, but before the whole amount had been ex-

changed the said Bank Note Company was enjoined 73
by an order of the Court of Common Pleas for the City and County of New York, at the suit of Anson Bangs from issuing the residue of the certificates engraved by it, and which balance of certificates were not issued (44 & 46, same record).

In consequence of this injunction the State Treasurer ordered the third class of certificates to be prepared in Washington, of which over $200,000 have been issued, *but for all that was issued of it original scrip was returned to the State Treasurer.* (See 74
Parker's testimony, fol. 65).

Mr. Williams, the present appellant, was induced to surrender his $417,000 of the bonds of the Blue Ridge Railroad Company in South Carolina and to take in payment therefor $165,000 *of the original certificates of indebtedness—not quite forty cents on the dollar* (p. 32 of Transcript of Record in Williams case).

This payment was made by the State Treasurer to Williams, the present appellant, and the bonds 75
were surrendered by the said Williams in the presence of the President of the Blue Ridge Railroad Company (see fol. 49, same record).

Edward B. Wesley, Esq., of New York, who came in open Court on the trial below, presented his scrip and submitted himself and his scrip to the direction of the said Court (fol. 130 of Transcript in Williams case), did not own any of the said Blue Ridge Railroad bonds; but, being a banker in Wall street, was "asked by John 76
"B. Palmer, President of the Central National "Bank of the City of Columbia, S. C., and "L. D. Childs, who was president of the Caro-"lina National Bank, at the same place, to ad-"vance a certain sum of money which would be "secured by a certain amount of revenue bond "scrip, and which money was to be applied to the

77 "redemption of certain bonds of the Blue Ridge "Railroad Company, guaranteed by the State of "South Carolina, and that these bonds so redeemed "would be returned to the State Treasurer to be "canceled, thus accomplishing the purpose of the "Legislature in providing for the issue of the said "scrip. That the said revenue bond scrip so con- "templated and provided by the Act of the Legis- "lature was in the hands of John J. Patterson, "who was the president of the Blue Ridge Rail-
78 "road Company. Mr. Wesley assented to the "proposition, and in the latter part of the month "of March, 1872, paid the sum of $326,925.00, and "received scrip to the amount of $975,000.00 at the "par value thereof." Fol. 50 and 51, Transcript of Record in Williams case, and Fol. 44 in the Assignee's case.

Mr. Wesley made a certain other advance of $18,000.00 in redeeming some other bonds of the same railroad, guaranteed by the State of Tennessee,
79 and received as security $30,000.00 more of the said scrip, making the total amount of scrip in his hands $1,005,000. Fols. 51–2. Fol. 44.

Mr. Wesley testified that the moneys firstly paid by him were paid for the benefit of the Blue Ridge Railroad Company and the State of South Carolina; the guaranty of the State in consequence thereof being retired by the bonds on which the guaranty was indorsed, being redeemed from hypothecation and canceled by the State Treasurer. Fol. 51,
80 Transcript of Record in Williams case, and Fol: 44 in record in Williams case.

He further testified that the amount of the bonds which had been guaranteed by the State of South Carolina thus redeemed were $2,485,000.00, to redeem which $326,925.00 were paid by him in cash, for which he holds *as security* $975,000.00 in par value of the certificates of indebtedness (fol. 52).

This redemption of the bonds owned by A. D. Williams and the bonds otherwise hypothecated, by the money of Wesley, actually relieved the State of South Carolina of a liability of $2,902,000.00 for the sum in gross of $491,925.00, a redemption at the rate of about 17 cents on the par dollar. Mr. Parker, then State Treasurer, testifies *that at the time the bonds were surrendered to him and that he issued the scrip, there was no intimation to him from any quarter that the State intended to question its liability for that scrip.* It was given out by him and received by the different parties with the assurance that it was a valid obligation on the part of the State. Fol. 65 of Transcript of Record in Williams case, and Fol. 58 in the Assignee's case. 81 82

THE CASES OF A. D. WILLIAMS AND OF E. B. WESLEY THEREFORE APPEAL TO EVERY THINKING MIND AS DESERVING OF RELIEF, UNLESS THE STRINGENT RULES OF LAW PREVENT IT.

That State was relieved of a very large load of obligation by the action of these honorable bankers —total strangers to their Legislature, not at all connected with their carpet-bag troubles, who stepped forward and advanced their cash in the great banking centre of this Union, viz:, the City of New York, to aid that State in its praiseworthy object of retiring its outstanding obligations. 83

The Attorney General of South Carolina (S. W. Melton), in his annual report of 1875, to the Legislature of South Carolina, in speaking of the Williams case decided in May, 1875, before U. S. Circuit Court (Waite, C. J., presiding), says: "Throughout this litigation extended over a period of three years the scrip of Mr. Wesley has not been directly involved; but it has been conceded by the Attorney General in argument, that he has a just claim to be refunded the full amount ad- 84

85 vanced by him to redeem the bonds, and the same equity exists in favor of several other parties who held bonds, and instead now in good faith hold this scrip."

BE IT REMARKED that thereby the bonds thus retired were obligations which were a *first lien* on the franchise and its appurtenances and property of the Blue Ridge Railroad in South Carolina. They were also *guaranteed* by the State of South Carolina. The creditor surrendered his lien and his
86 guaranty, not for cash *but only for certificates of indebtedness*. The action of Messrs. Williams and Wesley was not appreciated by the parties benefited by their capital, as will now be seen. Because long after the certificates of indebtedness had been prepared by the persons specially designated for that purpose by the Act of 1872, and long after Messrs. Williams and Wesley had accepted the proposals under the Act of 1872, and under their acceptance and action the bonds of the Blue Ridge Railroad
87 Company, which had been indorsed and guaranteed by the State, *had been redeemed from the persons by whom they were held and delivered back to the State Treasurer, it then and only then* became known that a question was made concerning the legal obligation of the State for these certificates of indebtedness, by the issue of which it had obtained possession of the whole amount of these guaranteed bonds, except that portion which was in the hands of the financial agent of the State. The
88 then Attorney-General of the State (afterwards the Governor of the State), having previously to their redemption made public his opinion that the obligation of the State was perfect, and that these certificates of indebtedness should be received for taxes, as provided for in the Act of 1872. Nevertheless, the legislature of South Carolina subsequently passed the following Acts, violating their said con-

tract with the present appellant and Mr. Wesley, viz.: *The Act of 22d of October, 1873, repealed the 4th section of the Act of the 2d of March, 1872, and expressly forbade the Comptroller-General to levy the tax provided for the redemption of the said revenue bond scrip*, which act is in these words, viz.: 89

"An Act to repeal section four (4) of an Act entitled, 'An Act to relieve the State of South Carolina of all liability for its guarantee of the bonds of the Blue Ridge Railroad Company by providing for the securing and destruction of the same;' approved March 2, 1872, and to repeal so much of section 72, chapter XII, title III, of the General Statutes as authorizes the State Auditor to give notice annually to each County Auditor of the rates per centum to be levied for various State purposes." 90

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, that section four (4) of an act entitled "An Act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company, by providing for the securing and destruction of the same, approved March 2, 1872, providing for an annual tax of three mills on the dollar for the redemption of the Revenue Bond Scrip be, and the same is hereby repealed. 91

SEC. 2. That so much of section seventy-two (72) chap. XII, title III, as directs that the State Auditor shall, on or before November fifteenth, annually, give notice to each County Auditor of the rates per centum authorized by law to be levied for various State purposes be, and the same is hereby repealed, and the Comptroller-General *is hereby forbidden to levy any tax for any purposes whatever unless ex-* 92

pressly hereafter authorized to do so by Statute."

Approved October 22, 1873.

See the Act on p. 63 of Transcript in Williams case, and p. 56 in the Assignee's case.

THE ORIGINAL ACT OF MARCH 2D, 1872, CONTAINED ON ITS FACE NO RIGHT TO ALTER, REPEAL OR MODIFY THE ACT. Another Act was passed by the Legislature, viz., the Act of December 22, 1873 (Sec. 10), in which this language is used: "That so much of section 72, of chapter XII, of title III, of part I, of the General Statutes as directs the State Auditor, on or before the fifteenth of November, annually, to give notice to each County Auditor of the rate per centum authorized by law to be levied for State purposes be, and the same is hereby repealed; and the County Auditors and County Treasurers of this State are hereby required, without further notice to proceed, on and after January 1, 1874, under the supervision of the Comptroller General, to the collection of the taxes hereby levied in the manner prescribed by law; *and they are hereby forbidden to collect, or caused to be collected, any other tax whatever, unless hereafter expressly authorized so to do.* * * * The section further imposes a criminal conviction of felony, punishable by fine and imprisonment, on any State or county officer who offends against the Acts, and the Legislature has since refused permission or authority to the officers whose duty it is to receive taxes levied for the State to accept payment of such taxes in the said revenue bond scrip. (See section 11 of Act of December 22d, 1873, Statutes of S. C., p. 517, for that year.) (See 6th allegation in the Williams bill of complaint, fol. 10, admitted in effect in the answer, fol. 30 of same record. Fol. 10 of record in assignee's case and answer, fol. 24.)

The only excuse for this action on the part of the 97
Legislature of South Carolina is that in a case *made up* between the State of South Carolina, *ex relatione* E. F. Gary against the several County Treasurers of the State, and in which issue was joined in the Circuit Court of South Carolina for the County of Richland, a decision was rendered that the Act of 1872 was unconstitutional and void, because that the said certificates of indebtedness were bills of credit issued by the State in violation of the article of the Constitution of the United 98
States. The County Treasurers, and all other officers of the State, were enjoined from collecting the tax required to be levied by the Act of 1872. Upon appeal, the Supreme Court of South Carolina affirmed the judgment. (See report of the case in the 4th South Carolina Reports, p. 311.)

THE PRESENT APPELLEE, A. D. WILLIAMS, WAS NO PARTY TO THAT SUIT NOR WAS HE REPRESENTED ON THAT ARGUMENT. NOR WERE THE ASSIGNEES IN BANKRUPTCY OF THE BLUE RIDGE RAILROAD COM- 99
PANY SUCH PARTIES. NOR WAS EDWARD B. WESLEY.

NATURE AND FORM OF THE ORIGINAL ACTION OF WILLIAMS AND OF THE PRESENT ONE, VIZ.:

In that original action of Mr. Williams, the complainant filed his original bill in behalf of himself "and of all others holding and claiming in the same right as to the matters thereinafter stated who 100
would come in, prove their claims and contribute to the expenses of the suit" (fol. 93, Transcript in Williams case).

An order was made in the progress of that cause referring it to George D. Bryan, Esq., as Special Master, to cause to be published a notice to all persons holding treasury certificates of indebtedness

101 issued under the Act of the Legislature of the State of South Carolina, of March 2d, 1872, to appear and make proof before said Special Master of the treasury certificates they hold, the claim of their title, time, consideration, and the persons from whom they obtained same—on which several matters the said Special Master was directed to make his report, with leave to report on any special matter brought before him. Notice was required to be given to the Attorney General of South Carolina of
102 the proceedings (see Order, p. 75 Transcript in Williams case.

On the 16th April, 1875, the Special Master made his report that notices had been given to the Attorney General of the several references (fol. 118, same record), and that publication of notices had been made in various newspapers published in New York City, Charleston and Columbia, S. C., and he annexed the testimony and depositions taken before him (fol. 118).

103 In his report he found various facts which are herein alluded to, more particularly in the history of the cause of action.

It appears from the report that the following revenue bond scrip was proven before him, held by the persons and corporations hereinafter named and their ownership, title to, and consideration paid for the certificates of indebtedness issued under the act of 2d March, 1872 (Legislature of South Carolina),
104 as well as the persons from whom they procured same, viz:

1st. The complainant, A. D. Williams, certificates to the amount of (fol. 120)...	$165,000
2d. Edward B. Wesley, certificates to the amount of (fol. 121)....	934,870
Same party, certificates to the amount of (fol. 121)	30,000

3d. The Citizens' Savings Bank in Bankruptcy, certificates to the amount of (fols. 53, 121)..... 18,000 105

4th. The Central Nat. Bank of Columbia, certificates to the amount of (fols. 54 and 121)..... 37,000

5th. R. and C. W. Swaffield, of Columbia, S. C., certificates to the amount of (fols. 54 and 122)..... 3,000

6th. J. P. Southern, of Columbia, S. C., certificates to the amount of (fols. 55 and 122)..... 70,500 106

7th. George W. Waterman, certificates to the amount of (fols. 56 and 122)..... 1,000
Also of the Washington scrip..... 440

8th. Wm. B. Gulic, of Columbia, S. C., certificates to the amount of (fols. 56 and 122)..... 5,400

9th. C. D. Melton, certificates to the amount of (fols. 57 and 122)..... 11,000 107

10th. D. Gambrill, certificates to the amount of (fols. 57 and 123)..... 175

11th. J. L. Neagle, of Columbia, S. C., certificates to the amount of (fols. 57 and 123)..... 191,760

12th. The Columbia, Augusta and Charlotte Railroad, certificates to the amount of (fols. 58 and 123)..... 20,000 108

13th. J. P. Low, assignee of the Blue Ridge Railroad, certificates to the amount of (fols. 58 and 123)..... 10,000

14th. F. S. Rodgers, of Charleston, certificates to the amount of (fols. 59 and 123)..... 19,725

109 15th. C. H. Baldwin, of Charleston, certificates to the amount of (fols. 59 and 124)..... 5,665

16th. Niles G. Parker, certificates to the amount of (fols. 59 and 124)..... 2,000

17th. R. K. Scott, of Columbia, certificates to the amount of (fols. 60 and 124) 18,200

18th. The Carolina National Bank of Columbia, certificates to the amount of
110 (fols. 62 and 124)..... 900

19th. J. P. Southern, banker of Columbia, S. C., original certificates (fols. 62 and 124)..... 20,000

Total amount (fol. 124)..... $1,585,635

Most of these holders were and are men and banking institutions of honorable standing in the
111 States of South Carolina and New York.

The effect of the Order of Reference to the Special Master, also of the proof made before him, and his report thereon, was to make all of said holders of said scrip parties complainants in that action, although no special order to that effect after the coming in of the report seems to have been made.

Story's Equity Pleadings, Secs. 103 and 106.

Forbes *v.* Memphis R. R. Co., 2 Woods,
112 Ct. Ct. R., 322.

Such appears to be the practice in South Carolina.

Thomson *v.* Palmer, 2 Rich. (S. C.), 32.

The other proceedings in the original action of Mr. Williams are correctly detailed in the preceding

part of this argument, also of the appeal and the 113
decision of the Supreme Court thereupon.

In the *present action of Mr. Williams* an order of reference was entered by consent on the 2d day of August, 1880, wherein it is provided among other things "THAT ALL OF THE TESTIMONY AND PROOFS HERETOFORE TAKEN IN SAID ORIGINAL ACTION BE CONSIDERED AS EVIDENCE IN THE PRESENT (THE NEW) ACTION THE SAME AS IF TAKEN THEREIN WITH LEAVE TO EITHER PARTY TO RE-EXAMINE ANY WITNESS HERETOFORE EXAMINED THEREIN." 114

Fol. 47, Transcript of the Record in Williams Case.

The same was done in the Assignee's Case.

Fol. 33 of the Record in the Assignee's Case.

Under such leave the present complainant introduced in evidence the transcript of the records in the Supreme Court, in his original appeal, which contained all such evidence (see p. 28 et seq., and fol. 115 in assignee's case, p. 32 et seq., and fol. 130 in Williams case). 115

So that the present action of Williams stands, so far as the original certificate owners, who proved their certificates before Mr. Bryan in that case as Special Master, in the same condition, with such additional strength as has been gained in it by a reformation and improvement of the bill of complaint and by the new and additional proofs. 116

The case therefore, *though in form in the name of A. D. Williams, the "Dominus Litis," yet really is not only for his benefit, but also for the benefit of all parties in interest who proved their claims in the original action before the Special Master Bryan*, or who may, by order of this Court, after they have decided this cause, be brought in to

117 share the benefits of the decision or to incur any of its expenses or burdens.

ON THIS, WILLIAMS' APPEAL, WE MORE PARTICULARLY REPRESENT A. D. WILLIAMS THE COMPLAINANT, AND E. B. WESLEY, WHICH TWO GENTLEMEN IN FACT ARE HOLDERS OF OVER $1,171,000 OF THE SCRIP, AND WHOSE TITLE IS ABSOLUTELY PROVEN TO BE OF THE MOST BONA FIDE CHARACTER.

The new facts made out by Mr. Williams in the present case are: firstly, that on the 23d April, 1879,
118 he took his scrip, viz., $166,000 in amount (specimen of which he produces and proves) (see fols. 36, 37 of Transcript in Williams case), and made a tender thereof to the Treasurer of the State of South Carolina at Columbia, and made a demand for payment of it. The demand was in writing. It appears at length on folios 40, 41 of the evidence in the Record in his case.

In reply, the treasurer refused to pay for the scrip, or to have anything to do with it, giving as
119 his reason that no money had been collected, and no appropriation made for its payment (fol. 37 in Record in Williams' case).

On the same day Mr. Williams made a verbal demand of the Comptroller-General of South Carolina, and at the latter's request on the next day made a written demand, which is set forth in the evidence (see fols. 37 and 41 Record in Williams' case,

In this demand, Mr. Williams, after referring to his demand of the State Treasurer, says: "I hereby
120 demand that you do, from time to time, prepare and transmit to the several county auditors all such forms and instructions as you may deem necessary for collecting, in the same manner and at the same time, as have been provided by law for the levy and collection of the regular annual taxes of the State for the present fiscal year, the taxes levied by the 4th section of the aforesaid Act of the General As-

sembly, for the redemption of said scrip"—meaning of said act of March 2d, 1872. To which the Comptroller, after admitting service of the demand, replied that he would refer the matter to the law officer of the State: but Mr. Williams never heard any more from him or the law officer about it (fol. 37), and after waiting several months commenced his suit. 121

No action was ever taken by the Comptroller-General in pursuance of the demand.

The scrip is shown by the witness *in New York to have become of no value* (fol 37). In order to test *its present value in South Carolina*, he caused twenty thousand dollars of it to be sold at auction by a leading auctioneer of Columbia, S. C., on 22d April, 1879, after advertisement in the public press, and all that it brought was $200, about one per cent. of its face value. (See fol. 37). 122

It was further proved that some $18,000 of the scrip owned by the Citizens' Savings Bank, who had become bankrupt, was sold at public auction, after due advertisement, on 5th January, 1880, and only brought $95, a trifle over one-half of one per cent. of its face value (fol. 38). 123

Mr. Williams further proved that he had made a contract with Mr. Cathcart, a tax payer of Columbia, S. C., to sell him $8,000 of his scrip at seventy per cent. of its face value, provided that the latter could use it in payment towards his taxes, (fols. 37 and 42.) Mr. Cathcart made the effort after that purchase to pay his taxes in part with that scrip to the County Treasurer of Richland county, but the latter refused to receive it. (See demand and refusal, fol. 42 of evidence). 124

Mr. Williams was compelled to take back the last-named scrip, and lost the benefit of his sale to Cathcart (see fol. 38), thus doing him an injury exceeding $5,000.

125 Mr. Williams also proved by testimony that demand had been made of the County Treasurer of Richland county, for Doctor Wheeler, to pay in part his taxes with some of the scrip as long back as May 16th, 1874, but the then County Treasurer had refused to recognize or receive it (fol. 43.)

So also we proved by Mr. Southern, one of the assignees, *demands for the scrip pledged to Wesley, viz:* $994,870, *which were also refused. These demands were made of the State Treasurer, also of*
126 *the Comptroller-General* (see fol. 39).

Mr. James P. Low, one of the assignees of the Blue Ridge Railroad Co., was also examined as a witness in both of the present cases and proved in 1874 three several tenders of scrip and demands made of the Treasurers of different counties, viz: of the County Treasurer of Oconee county, of the County Treasurer of Anderson county, and refusals by them to receive the same in payment of taxes then due to the State of South Carolina from the
127 Blue Ridge Railroad Co. other than those levied to pay interest on the public debt (see evidence taken on commission, fols.). Mr. Williams, the present complainant, proves that his scrip is all of the original issue, and it is now in his possession (pp. 29 to 31). *As to Wesley's scrip, viz:* $994,870, (*fol.* 190), *he now holds it under pledge from the Blue Ridge Railroad Co., to secure his advance of* $326,925, *as before detailed in this argument* (fol. 40).

The equity of redemption in said scrip is in the
128 assignees of the Blue Ridge Railroad Co. (see fols.).

IN THE WILLIAMS CASE, THE PRAYER FOR RELIEF IS SUBSTANTIALLY THIS:

1st. That the Act of the Legislature of the State of South Carolina, of the 2d of March, 1872, *may be decreed a contract binding on the State of South*

Carolina, and affecting the said State with an obli- 129
gation to do and perform, or cause to be done and performed, the several matters and things therein stipulated and set forth to be done and performed by the said State through its officers and agents, particularly so much of the said Act as provides for the levy of a tax to retire the said certificates of indebtedness, and to receive the same in payment of taxes and other dues to the State, except the tax to pay interest on the public debt.

130

2d. That the several parties holding or claiming to hold the said certificates of indebtedness, *bona fide*, and for value, may be called in and admitted to prove the same before a proper person to be appointed for that purpose; that the whole amount of such treasury certificates of indebtedness may be ascertained.

3d. That *the repeals of the provisions* of the said Act of the 2d March, 1872, by the Legislature *may* 131
be declared unconstitutional, null and void, because such repeal impairs the obligation of the contract between the State of South Carolina and the complainant, and all other parties who are *bona fide* holders of such treasury certificates of indebtedness.

4th. That for the purpose of defending itself in such manner as it may be advised to be proper, the State may be allowed, upon the application of its Attorney-General in its behalf, to be made a party 132
to these proceedings.

5th. That upon the ascertainment of the amount of treasury certificates of indebtedness, proper process may be decreed against the State Treasurer to perform the duties enjoined upon him by the 4th section of the Act of March 2, 1872, that is to say,

133 to redeem the aforesaid treasury certificates of indebtedness tendered to the State Treasurer, he may be required to receive the same in payment of all dues to the State except interest on the public debt, and that proper process may be issued against the Comptroller-General requiring him to perform the duties enjoined upon him under and pursuant to the different sections of the said Act of March 2, 1872, and for that purpose he from time to time be decreed to prepare and transmit to the several County Aud-
134 itors all such forms and instructions as may be proper and lawful for levying and collecting, or either, in the same manner as the annual taxes, the taxes required to be levied by the 4th section of the Act of March 2, 1872.

6th. That the County Treasurers of the said State be required to receive such treasury certificates of indebtedness as may be established as a claim under the contract created by the said Act, in tender of
135 taxes and dues to the State, except interest on the public debt.

7th. That in cases where such tender is made the County Treasurer refusing to receive the same shall be prevented by injunction from selling property or otherwise enforcing the payment of the said tax.

8th. *That a mandatory injunction* may be issued out of this honorable Court requiring the Comptroller-General to cease from refusing to levy the tax
136 for retiring said treasury certificates, and the County Treasurer to cease *from refusing to receive* the same for taxes and dues to the State, except to pay the interest on the public debt, and for such other and further relief as to your Honors shall seem meet."

In the answer of the defendants in the Willliams

case, for whom the present Attorney-General ap- 137
pears, the passage of the different Acts of the Legislature of the State of South Carolina is in effect admitted, and the defense is placed on the following points, viz:

Firstly.—That the condition upon which the State originally guaranteed the $4,000,000 of bonds for the Blue Ridge Railway Company has never been complied with. That the so-called repeal of that condition contained in the Act of March 6, 1871, 138
was invalid under the provisions of the State Constitution of South Carolina, and that the companies never brought themselves by their consolidation within the provisions of such repeal (fols. 28 to 29.)

Secondly.—That when the Act of March 2, 1872, was passed, the Blue Ridge Railroad Company still held the bonds in question, with the guarantee of the State endorsed on them. He maintains in the answer that it was a falsity therefore to aver, as is 139
averred in the recital of the Act of March 2, 1872, that the State was a debtor. That the consideration for the issues of said revenue bond scrip was therefore pretentious and invalid, and failed (fols. 29 .)

Thirdly.—That the complainant is not a *bona fide* owner for value. That the Act of March 2d, 1872, creating the scrip, was unconstitutional and invalid, and was so declared in the case of Gary 140
against the several County Treasurers, which was affirmed on appeal by the Supreme Court of South Carolina (fols. 29 .)

That they, *i.e.*, the defendants, are merely officers of the State of South Carolina, and have no authority under the laws, except to obey the existing laws, and that the State is a necessary party.

141 HISTORICAL STATEMENT, SO FAR AS THE CASE OF ASSIGNEES OF THE BLUE RIDGE RAILROAD COMPANY AGAINST CERTAIN STATE OFFICIALS IS CONCERNED.

The State of South Carolina by charter created the corporation known as the Blue Ridge Railroad Company. This charter bears date the 16th December, 1852. The object was to create a direct communication with the people of North Carolina,
142 Georgia, and Tennessee.

The thirteenth section of the charter provides: "That the faith and funds of the State of South "Carolina be, and the same are, hereby pledged "to secure the punctual payment of any contracts "that shall be made for borrowing money by the "Blue Ridge Railroad Company from any person "or persons, company or companies, corporation "or corporations, to any amount not exceeding "one million two hundred and fifty thousand
143 "dollars, either in the United States or in Europe; "and when such contracts shall be made, by bond "or bonds, signed by the president of the said "company, under its seal, and countersigned by "the secretary and treasurer thereof, it shall be the "duty of the Comptroller-General of this State to "indorse thereon that the faith and funds of the "State of South Carolina are pledged to the faithful performance of the said contract or contracts; "provided that the interest to be made payable
144 "thereon shall not exceed six per centum per annum, in quarterly or half yearly payments; and "provided, also, that the Comptroller-General shall "not indorse any such contract or contracts, until "satisfactory proof is produced by the Governor of "the State that five hundred thousand dollars are "duly subscribed by responsible persons, companies or corporations, to the capital stock of the

"said Blue Ridge Railroad Company, in South 145
"Carolina," with other provisos in the said section not necessary for consideration here.

And the fourteenth section provided: "That "as soon as the Comptroller shall have made any "such indorsement on any such contract, the whole "estate, property, and funds, within the State, "which the said company may then possess, or shall "afterwards acquire, shall thenceforth stand "pledged and mortgaged to the State without any "further act or deed, on the part of the company, 146
"for the faithful and punctual performance on the "part of the said company of such contracts, in "priority and preference of any debt which the said "company may then or at any time owe."

In this section, also, are various provisos and conditions to which, for the purposes of this case, particular attention is not required.

By an act of the legislature, passed the 21st December, 1854, the thirteenth and fourteenth sections, 147
just referred to, were repealed; and in this act of 1854 provision is made for the following purposes:

A conditional subscription by the State for $500,000, stock of the Blue Ridge Railroad Company in South Carolina, that the Governor is authorized and directed to issue in the name of the State, bonds, to be countersigned by the Comptroller General, not exceeding one million of dollars.

And then in the seventh section is the substitute for the 13th and 14th section of the act of 1852; the 148
various provisos and conditions can be easily referred to; that portion of the section to be prominently presented in these words: "the said bonds "so indorsed shall not be sold or issued below the "par value thereof; or if so sold or issued below "the par value, the indorsement thereof shall be "void."

149 It may be said here that no issue of bonds was made under this act.

It may be well also to remark here, that the corporation with which we are specially concerned is "The Blue Ridge Railroad Company in South Carolina," so distinguishing it from the Blue Ridge Railroad Company, which comprehended it, and the other roads in other States to be combined with it, as will be seen by its charter.

In 1854 (20th April), by an indenture in nature of
150 a mortgage, all the property of the Blue Ridge Railroad Company in South Carolina was conveyed to secure certain bonds of the corporation, which bonds are now outstanding, and have been proved in the proceedings in bankruptcy against the said company.

The Legislature of the State, by an act approved 15th September, 1868, entitled "An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina," did, in the preamble to that act,
151 recite the act of 21st December, 1854, and declared that the Comptroller-General has not indorsed any of the bonds issued by the Blue Ridge Railroad Company in South Carolina under the authority of the said act; and, moreover, that "the conditions imposed upon said indorsement by said section seven have become impossible and injudicious, while the necessity for the completion of said road has become more urgent in the interest of the State."

The first section of that act then provides that,
152 "without reference to the said provisos and conditions, whenever any contract or contracts may "be made by the president of the said company "under its seal, as provided in the said Act, not exceeding one million dollars, it shall be the duty of "the Comptroller-General to indorse thereon that "the faith and funds of the State are pledged to "the faithful performance of the said contract or

"contracts as respects the punctual payment both 153
"of principal and interest, according to the terms
"of the said contract or contracts, provided that so
"much of the said issue as may be necessary, not
"exceeding three hundred thousand dollars, shall
"be applied to the redemption of the present bond-
"ed debt of the said company."

The bonded debt referred to is that secured by the indenture, in the nature of a mortgage, of the 20th April, 1854, and, as we are informed, amounted to about $266,000. 154

The second section of the same act provides for the pledge of the faith and funds of the State of South Carolina, to secure the punctual payment of any contract which shall be made by the Blue Ridge Railroad Company in South Carolina, from any person or persons, corporation or corporations, to an additional amount, not exceeding three millions of dollars, either in the United States or Europe, "and
"when such contracts shall be made by bond or 155
"bonds signed by the president of the company
"under its seal, and countersigned by the secretary
"or treasurer thereof, it shall be the duty of the
"Comptroller-General of this State to indorse there-
"on that the faith and funds of South Carolina are
"pledged to the faithful performance of the con-
"tract or contracts, as it respects the punctual pay-
"ment, both of the principal and interest, accord-
"ing to the terms of said contract or contracts."

156

Then follow these provisos: The interest shall not exceed seven per centum per annum; as soon as the Comptroller-General shall have made his indorsement, "The whole estate, property and funds in
"the States of South Carolina, Georgia, North
"Carolina and Tennessee, which the said company
"may then possess, or shall afterwards acquire,
"shall thenceforth stand pledged and mortgaged

157 " to the State, without any further act or deed on
" the part of the company, for the faithful and
" punctual performance on the part of the said
" company of such contract, in priority and prefer-
" ence of any other debt which the said company
" may thereafter create or incur." And a further
proviso in form of an express condition, " that the
" said bonds, or any part thereof, shall not be used
" unless upon the express condition that upon ap-
" plication to the Congress of the United States, or
158 " to private capitalists, the amount of three millions
" of dollars in currency, or so much of that sum as
" may be necessary, shall be furnished in exchange
" or upon the security of said bond." See act on page 49 to 51 of Transcript in assignee's case. It will thus be seen that the State undertook to guarantee bonds of the corporation to the amount of four million dollars. To the guaranty of the first million no qualification or condition is expressed. The only direction given is that of this million
159 $300,000, if so much be necessary, shall be applied to redeem the bonds issued under the mortgage of the 20th April, 1854. To this followed the Act of March 6th, 1871, which repealed the condition that the bonds should not be used unless upon application to Congress of the United States or to private capitalists, etc., as above expressed. See act on pp. 51 to 53 of Transcript in assignee's case. To this followed the Act of the Legislature, 2d March, 1872, above set forth. In the Act of March 2d, 1872, the
160 foregoing legislation is recognized, and in it it is declared that " the said bonds and the coupons there-
" of of the said company *have been issued under*
" *and in pursuance of the provisions of the afore-*
" *said Act, and that they are now pledged in the*
" *City of New York and elsewhere.*"

Under this Act of March 2d, 1872, the certificates styled revenue bond scrip were issued, and all of

the $4,000,000 of bonds guaranteed were retired, with 161
the exception of a few thousand dollars, as above recited in speaking of the history of Mr. Williams' cause of action.

See also Parker's testimony, fol. 61 of Transcript in Assignee's case.

The question of the constitutionality and validity of the State's endorsement of guaranty on the $4,000,000 of the bonds of the Blue Ridge Railroad Company was agitated and tried in the Circuit Court for the 162
County of Richland, State of South Carolina, in a suit brought by the State of South Carolina. After full argument that Court, S. W. Melton, C. J. (afterwards Attorney General), decided that the endorsement was valid and constitutional. No report of this case appears in the Standard Reports of South Carolina, although it was a well-known decision, widely published in the journals printed in the State. We have procured the following authenticated report of it: 163

CHARLESTON, S. C., 29th Oct., 1883.

I hereby certify that while I was Judge of the Fifth Circuit of the State of South Carolina a case came before me for trial, in which was involved the question of the validity of the endorsement by the said State of South Carolina of the bonds of the Blue Ridge Railroad Company, in South Carolina, in pursuance to an act of the General Assembly of said State, entitled "An Act to authorize addi- 164
tional aid to the Blue Ridge Railroad Company in South Carolina," passed on the 15th day of September, 1868 (14 S. C. Stat.-at-large, p. 25). That Mr. Attorney General Chamberlain represented the State of South Carolina in said case; and he took the ground that said act was constitutional and valid; that I, as Judge, as aforesaid, sustained the

165 constitutionality and validity of said act; that no appeal was taken from such, my decision, and that I am informed and believe that the record of said case cannot now be found among the records of the Court of Common Pleas for Richland County, in the said State, in which county the said case was tried.

(Sd.) SAM. W. MELTON.

166

IN THE CIRCUIT COURT.

STATE OF SOUTH CAROLINA }
County of Richland. }

STATE OF SOUTH CAROLINA, *ex rel.*, *vs.* 167 THE COMPTROLLER GENERAL.	Complaint for Injunction.

I hereby certify that I know the foregoing signature to be that of Samuel W. Melton, formerly the presiding Judge of this Court. I further certify that diligent search has been made in my office, and the record of said case cannot be found.

Given under my hand and seal of office, at Columbia, this, the 16th day of November, A. D. 1883.

168 Signed, E. R. ARTHUR,
[L. S.] Clerk of Circuit Court.

WINNSBORO', S. C., 17th Nov., 1883.

I hereby certify that I recollect the above case, and the argument made by the Hon. D. H. Cham-

berlain (then Attorney-General, afterwards Governor), in the case. 169

Signed, JAS. H. RION,
Atty. and Sol'r in the U. S. Courts for S. C. and N. C.

BURLINGTON, VT., August 2, 1884.

My dear Sir: Replying to yours of the 29th ult., just received here, I have to say that I have no copy of the argument referred to, but that I distinctly remember that the position taken was that which you have stated, namely, that the obligation of the State in the endorsement of the bonds was not a debt but a contingent or secondary liability. 170

With cordial regards,
Yours very truly,
D. H. CHAMBERLAIN.

Col. JAS. H. RION,
Winnsboro', S. C. 171

ABSTRACT OF THE BILL OF COMPLAINT IN THE ASSIGNEE CASE.

The present bill of complaint in the assignees' case alleges in substance:

1. That the Blue Ridge Railroad in South Carolina, a corporation created by the laws of South Carolina, was adjudged a bankrupt by the District Court of South Carolina, on April 22d, 1873, and on the 16th day of July, 1873, the complainants were appointed assignees of said corporation, with one George W. Williams, who has since been discharged as assignee (fols. 5 and 6 of the transcript in the assignees' case). 172

173 2. The bill of complaint further shows that at the time it was so adjudicated a bankrupt, the Blue Ridge Railroad Company in South Carolina held and owned certain obligations of the State of South Carolina, in the shape of treasury certificates of indebtedness to the amount of $1,005,715.33, of which revenue bond scrip the complainants are owners as such assignees of $10,845.33, by absolute title, and the remaining $994,870 thereof, by equitable title or right of redemption, after paying E.
174 B. Wesley or his assignee the sum of $326,925, which the said Wesley advanced in latter part of March, 1872, to enable the said company to take up and surrender $2,485,000 of the bonds of the company guaranteed by the State of South Carolina, and also after paying Wesley $18,000, advanced to enable it to take up $30,000 guaranteed by the State of Tennessee, and after also paying certain bond creditors to the amount of $135,000, decreed to be paid out of the
175 surplus of said $984,870 of said scrip in the hands of said Wesley, and the assignees are entitled to the same after paying sums as aforesaid (fols. 5 and 6). Same record.

The bill of complaint further alleges that the nature of said revenue bond scrip and of the complainant's rights thereto will appear by the following facts, viz:

3. The Legislature of South Carolina, on the 13th
176 of September, 1868, passed an act to authorize additional aid to the Blue Ridge Railroad Co. in South Carolina, and therein authorized and directed the Comptroller-General of South Carolina to indorse on certain bonds of the said B. R. R. Co., to the amount of $4,000,000: "that the faith and funds of the State of South Carolina are pledged to the faithful performance of the said contract, as respects the

punctual payment of both principal and interest," and the Comptroller-General so indorsed $4,000,000 of bonds of said company. A proviso to the act annexed requiring the issue of the said bonds or contracts to be made on certain terms was by a subsequent act passed on March 6th, 1871, repealed, and therefore the said bonds became in the hands of the Blue Ridge Railroad Co. applicable to its corporate purposes without restriction (fol. 6). Same record. 177

4. The bill of complaint further alleges that the Blue Ridge Railroad Company issued the whole amount of the said bonds for its corporate purposes, which bonds passed into the hands of purchasers for value, and the State of South Carolina thus, by reason of its guaranty, became liable to the holders in the sum of four millions of dollars (fol. 6). Same record. 178

5. The bill of complaint further alleges the passage of and sets forth the Act of March 2, 1872, entitled "An Act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Co.," and sets forth the provisions of the said act, viz: (Fols. 6 to 8). Same record. 179

1. That on the surrender by said company to the State Treasurer, the latter should issue treasury certificates of indebtedness to the amount of $1,800,000.

180

2. The said certificates should be denominated revenue bond script; should express that the sum named therein was due to the State of South Carolina; that they should be received in payment of taxes and all other duties to the State, except special taxes levied to pay interest on the public debt.

181 3. The 4th section of that Act provides that the faith and funds of the State are hereby pledged for its ultimate redemption, and the County Treasurers are required to receive the same in payment of all taxes levied by the State, except in payment of special taxes levied to pay interest on the public debt.

4. That the State Treasurer and all other public officers are hereby required to receive the same
182 in payment of all dues to the State.

5. To provide for the redemption of the same, an annual tax of three mills on the dollar in addition to all other taxes *is hereby levied*, to be collected in the same manner and at the same time provided as for the collection of the regular annual taxes of the State.

6. The State Treasurer is required to retire at the end of each year one-fourth of the amount of
183 the treasury scrip, hereby authorized to be issued, until all of it shall be retired, and to apply to such purpose exclusively the taxes hereby levied.

7. On delivery of said bonds by the said company to the State Treasurer the Treasurer was required to cause the same to be canceled or destroyed.

6. The bill of complaint further alleges that upon
184 the passage of the said Act, viz.: of March 2, 1872, the Blue Ridge Railroad Company proceeded to perform its part of said contract, and having met with great success in its efforts was able to deliver to the Treasurer of South Carolina nearly all the balance of the said bonds.

The said Treasurer thereupon delivered to the said company revenue bond scrip duly executed in

conformity with the said Act of March 2d, A.D. 185
1872, in an amount proportioned to the amount of the said bonds delivered by it to him.

To enable the company to redeem and surrender up $2,485,000 of said bonds the said company borrowed of E. B. Wesley $326,925, and pledged with him as security therefor $975,000 of said scrip, and also a further sum of $30,000 to secure him for $18,000 for cash to redeem certain other bonds of said company. That the complainants own the equity in said scrip, after paying $135,000 of other 186
liens (fol. 8, same record).

8. The complainants further allege that by virtue of the said scrip a valid contract subsists between the State of South Carolina and the holders thereof; that for its liability to perform such contract the State of South Carolina received not only valuable but a very large and adequate consideration in the surrender and extinguishment of bonds due by it for more than double the revenue bond scrip deliv- 187
ered to the Blue Ridge Railroad Company; and that the State of South Carolina is and its Comptroller-General and County Treasurer are bound in law and good conscience to perform its contract as set forth in the said Act of March 2d, 1872, and in the revenue bond scrip (fol. 9, same record).

The bill of complaint further shows that the company, before their bankruptcy, and the complainants as assignees, and also Edward B. Wesley, their pledgee and his assigns, repeatedly and on many 188
occasions, have endeavored to have said revenue bond scrip redeemed, and took various proceedings in law and in equity to do it. That the State officers invariably, in answer to all such efforts, pretended that the Act of March 2d, 1872, was invalid, on the ground that *it created bills of credit and not instruments to secure sums of money.*

189 That the State officers repudiated said scrip, resisted various proceedings of certain lawful holders of the revenue bond scrip to enforce payment of the same, the result of which was that the Comptroller-General and the County Treasurer absolutely and unqualifiedly refused to comply with the Act of March 2d, 1872, although a large amount of the said bonds were surrendered up, *by means of which the complainants are put in the position of defrauding said Wesley and other parties of money loaned on*
190 *said scrip* (fol. 8 and 9, same record).

9. The bill of complaint further avers that the State of South Carolina has refused to perform its said contract, and has made several laws impairing the obligation thereof.

First— It abolished the State Auditor, he being the officer through whom the said contract was to be performed.

191 *Second*—By an Act dated October 22, 1873, at which time the Blue Ridge Railroad Company had become the holder and owner of said scrip, it repealed the 4th Section of the Act of March 2, 1872, and expresly forbade the Comptroller-General to levy the tax therein provided for. By an Act passed on December 22, 1873, it repealed so much of Sec. 72. Chap. 12, Title 3 of the General Statutes, as authorized the State Auditor to give notice annually to each County Auditor of the rate per centum
192 to be levied for various State purposes; after the passage of the Act of March 2d, 1872, and delivery of the bond scrip aforesaid, it passed an Act on Dec. 22d, 1873, requiring the County Auditors and Treasurers, to proceed, under the supervision of the Comptroller-General, to the collection of the taxes therein levied, and forbade the County Treasurers to levy any tax but those included in the said Act, which

made no provision for a tax to be levied on behalf of 193
the holders of the revenue bond scrip, and the said State having levied several regular annual taxes, has levied no tax for the holders of revenue bond scrip (fols. 10 to 11, same record).

10. The bill of complaint further alleges that when the Blue Ridge Railroad Company was adjudicated a bankrupt, and the complainants now, as its assignees in bankruptcy, are indebted to the State of South Carolina in the sum of 10,845 $\frac{33}{100}$ dollars, being so much taxes assessed and imposed 194
by the said State on the property of said company, none of which are special taxes levied to pay interest on the public debt.

On these 3,304 $\frac{11}{100}$ dollars are assessed and imposed by and are payable to the defendant, the county treasurer of Anderson county, and 7,541 $\frac{22}{100}$ dollars are assessed and imposed by and payable to the defendant, the county treasurer of Oconee county.

To each of which treasurers they have tendered 195
said scrip in payment, but the defendants allege that the authority was taken from them by the Acts of October 22, 1873, and December 21, 1873 (fol. 11, same Record.)

11. The bill of complaint further in effect alleges that the Comptroller-General, whose duty it is to levy a tax in payment of the revenue bond scrip held by the complainants, has neglected and refused so to do, and pretends that his authority has 196
been taken away by the acts of Oct. 22, 1873, and Dec. 22, 1873 (fol, 11.) Same Record.

12. The bill of complaint, therefore, charges (fols. 11, 12), that the Acts of the State of South Carolina are in breach of its contract with the complainants as holders of said scrip—in fraud of their rights in that respect, and against equity.

That the Statutes abolishing the office of auditor and repealing the provisions of Act of March 2d, 1872, are laws impairing the obligation of a contract, invalid and void as being in violation of the Constitution of the United States.

They cannot perform their duties as assignees because the taxes due by them are a lien upon the property of the company and create a cloud on their title, and by reason thereof they are unable to make for the creditors they represent as good a sale there-
198 of as otherwise they might.

13. The complainants further aver that by reason of these actings and doings the said revenue bond scrip has become depreciated in value and is rapidly depreciating in value, and they fear and charge that the revenue bond scrip so pledged and in the hands of Wesley and others has become and is, by said actings and doings, and is rapidly becoming depreciated in market value, and unless restrained will not be worth the loans on the same. That their
199 property is becoming less valuable and they will suffer great loss and irreparable damage, and they will be subjected to numerous suits and litigations in consequence thereof (fol. 12.) Same Record.

Prayer for Relief in the Assignee's Bill of Complaint.

200 (Fols. 12 and 13, same Record.)

That it be decreed:

1. That a valid contract exists between the plaintiffs as holders of the said revenue bond scrip, and the State of South Carolina, whereby the latter is bound to perform the matters by the said scrip and the Act of March 2d, 1872, required to be done.

2. That the said State, for the purpose of defending itself as it may be advised to be proper, be allowed on the application of its Attorney-General to become a party to these proceedings. 201

3. That the repeal of the provisions of the Act of March 2d, 1872, be decreed to impair the obligation of said contract, and therefore to be unconstitutional, null and void, and said contract may be declared to be valid and subsisting.

202

4. That the Comptroller.General of South Carolina, may be required to levy a tax to satisfy the revenue bond scrip held by the complainant.

5. That the defendants, the County Treasurers, may be decreed to receive the said scrip in payment of taxes due by the complainants to the State of South Carolina.

6. That on their refusal to do so they may be enjoined from enforcing the said taxes by selling the property of the complainants or in any other manner. That on such refusal the lien of the said taxes on the property of the complainants may be declared to be discharged. 203

Prayer for general relief.
Prayer for injunction and subpœna.

In the Assignees case the same evidence was taken as in the case of Williams with some additional matters peculiar to the case itself, viz.: 204

1. The tenders to the two County Treasurers of Anderson Co. and Oconee Co. (see fols. 39 to 40, Record in Assignee's case.)

2. The pledge to E. B. Wesley (see folios 43, 44, 45, 46, 54, 59.)

205 3. That the complainants were and are assignees.

(Order appointing assignees read in evidence. pp. 57 and 58 of Record in Assignee's case.)

Points.

I.—The present appellees in the Low & 206 Southern case being assignees in bankruptcy of the Blue Ridge Railroad in South Carolina, filed their bill of complaint in 1874 in the U. S. Circuit Court, for the Fourth Circuit, District of South Carolina.

(*a.*) Under the bankrupt law existing at that time (Revised Statutes, Sec. 4972, Subd. 6 and Sec. 4979), they could not get any relief in the State 207 Courts.

They rightly brought their action in the Circuit Court of the United States, which had exclusive jurisdiction.

(*b.*) The act repealing the bankrupt law (June 7, 1878, 20 Stat. at Large, p. 99) saves all the rights acquired by this suit until it *be finally disposed of*—in the same manner as if said act had not been repealed.

208 (*c.*) This suit was commenced, subpoena *ad resp.* issued 1st day of April, 1874, (transcript of record, p. 64, assignees' case) proofs of service of same on defendants in August, 1874, (p. 64), answer filed Oct. 5, 1874 (p. 67).
Dismissal of bill, May 14, 1875 (p. 78).
Appeal, May 14, 1875, (p. 79).
Appeal perfected, Oct. 16 (p. 80).

Decree of dismissal reversed by S
Oct. Term, 1878 (p. 1)—new tr
Bill amended April 10, 1879 (p.
Amended bill served 9th May, 1
New subpoena *ad resp.* issued M
15).
Served May 9, 1879 (fol. 18).
September 3d, 1879, answer file
April Term, 1881, cause tried (f
Decree granted May 15, 1882, as
to this Court.

(*d.*) The suit directly affects the t
erty owned by the Blue Ridge
their assignees, at the time the
menced.

(*e.*) The bill in equity saved and a
plicity of suits, viz: writs of *me*
tions of trespass, and prever
damage to their proprietary rig

Woodruff *v.* Fisher, 17 Bar

(*f.*) To oust a Court of Equity of it
the ground of remedy at law th
be obvious, adequate and comp

City of Hartford *v.* Chapm
Hollingshead *v.* McKenzie,
Scott *v.* Scott, 33 Ga., 102.
Harper *v.* Whitehead, Ibid

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Appeal, May 14, 1875, (p. 79).
Appeal perfected, Oct. 16 (p. 80).

Decree of dismissal reversed by Supreme Court, Oct. Term, 1878 (p. 1)—new trial granted. 209
Bill amended April 10, 1879 (p. 2).
Amended bill served 9th May, 1879, (fol. 14).
New subpoena *ad resp.* issued May 5 1879, (fol. 15).
Served May 9, 1879 (fol. 18).
September 3d, 1879, answer filed (p. 11).
April Term, 1881, cause tried (fol. 113).
Decree granted May 15, 1882, as appealed from, to this Court. 210

(*d.*) The suit directly affects the taxation of property owned by the Blue Ridge Railroad, or by their assignees, at the time the suit was commenced.

(*e.*) The bill in equity saved and avoided a multiplicity of suits, viz: writs of *mandamus* and actions of trespass, and prevented irreparable damage to their proprietary rights. 211

Woodruff *v.* Fisher, 17 Barb., 224.

(*f.*) To oust a Court of Equity of its jurisdiction on the ground of remedy at law that remedy must be obvious, adequate and complete.

City of Hartford *v.* Chapman, 21 Conn., 488.
Hollingshead *v.* McKenzie, 8 Ga., 457.
Scott *v.* Scott, 33 Ga., 102.
Harper *v.* Whitehead, Ibid., 138.
Madison Avenue Baptist Church *v.* Madison Avenue B. C., 26 How. N. Y., R., 72. 212

(*g.*) Where a defendant, as in this case, neglects to object to the jurisdiction of the Court on the ground that the complainant has an adequate remedy at law until after the testimony in the cause is in, it is too late.

Cumming *v.* Mayor, 11 Paige, 596.

213 **II.**—THE WILLIAMS CASE, THOUGH NOMINALLY THAT OF AMOS D. WILLIAMS, YET ACTUALLY BEING BROUGHT BY AND ON BEHALF OF OTHERS SIMILARLY SITUATED WHO CAME IN AND PROVED THEIR SCRIP, ACTUALLY AFFECTED THE RIGHTS OF SEVERAL BANKS DOING BUSINESS IN SOUTH CAROLINA, VIZ.:

The Citizens Savings Bank, fol. 53.
The Central National Bank of Columbia, 54.
214 The Carolina National Bank of Columbia, 62.
Also the Columbia, Augusta and Charlotte Railroad, fol. 58.

All of whom were owners of Revenue Bond Scrip which was proven before Special Masters Bryan. All of these institutions were subject to taxes in South Carolina. Sec. 206, 164, 180 R. S., of S. Ca.
215 This takes his case out of the operation of the decision of Marye *v.* Parsons, 114 U. S., p. 325.

Mr. Williams was not a taxpayer in South Carolina it is true.

He was a resident and citizen of the State of New York. As such he was entitled to bring a suit in the Federal Court, if he had a case. He had the right in the Federal Courts to have the same measure of right and remedy that if he were a citizen of South Carolina he would have had in
216 the Courts of that State against its public officers—conceding the subsequent legislation of South Carolina to have been unconstitutional—and also such additional remedy as was appropriate to strictly Federal questions.

The cases of Williams *v.* Hagood, 98 U. S., p. 72, and of Marye *v.* Parsons, 114 U. S., 325, were well decided, because in neither case did

either Williams or Marye show any effort prior 217
to their respective suits to induce the State officers of their respective States to comply with the provisions of their respective Statutes creating the securities affected by the subsequent legislation of either State prior to bringing their several suits. They respectively, on their respective causes of action, as the Appellate Court well remarked, presented merely abstract questions to this Court for decision.

218

The quotations from the decisions in the Williams case, 98 U. S., p. 72, made in the preliminary part of these points, shows that he did not prove that before he brought that suit the Comptroller-General *had neglected or refused* to perform any duty imposed on him by the act of March 2, 1872, nor that he *had refused* nor *threatened to refuse* to do so. "Nor did he show that the County Treasurer had *refused or even threatened to refuse receiving his scrip*—nor did he show that he had *made any de-* 219
mand of the State Treasurer or *any tender to the County Treasurer*."

On the present appeal he presents an entirely different case. He has complied with the directions laid down in the opinions of the Court on the previous appeal in his case—has made his demands of the Comptroller—also of the State Treasurer; has sold certain of his scrip in South Carolina to a purchaser there, one Cathcart, who was a taxpayer, and who tendered same for taxes, which was re- 220
fused and the scrip returned to him—*thus doing him a damage of about* $5,000—because, at the time of said conditional sale, he shows that such scrip was worth one cent on the dollar. By his conditional sale he would have got $5,600 or 70 cents on the dollar. It not being capable of use he lost his sale.

Now, if it be true that not being a tax payer he

221 can get no remedy (notwithstanding the new case presented by him *in compliance with the opinion of this Court on the previous appeal*), *to have his right of contract with the State of South Carolina declared to be valid and unaffected by its subsequent conditional legislation, or, to have it decided by this Court that his scrip was constitutional and not a State bill of credit, so as to restore its market value* or to coerce the State officers to carry out the provisions of the act of March 2, 1872,
222 which in addition to the obligation to receive this scrip for taxes, enjoined upon the State officers to collect the special tax levied by the very act creating it to retire said scrip, and which enjoined upon the State Treasurer to redeem each year one-fourth of it until redeemed, and if he could not make an effective sale of it *in South Carolina* because of its being a supposed State bill of credit to a citizen of that State to enable the *latter to pay his taxes*—all of which were elements not existing originally
223 in his case (98 U. S., p. 72), nor in that of Marye *v.* Parsons, 114 U. S., p. 325, his situation and that of all other scrip holders not citizens of South Carolina, nor owning taxable property therein, becomes without remedy. The circumstances surrounding the creation of said scrip demonstrate that it was intended by South Carolina to be created to retire obligations of that State in the hands of *men like himself doing business in Wall Street*, and the State of South Carolina, in the act of March 2, 1872,
224 *recited that fact*, and offered to that class of men, in order to get up their obligations, that class of securities having the only quality giving it a vendible market with them, viz:

1. Its receivability for certain State taxes and dues.

2. Its retirement in 4 years—one-fourth each year —secured by a levy of a special tax to enable the State officers to do so.

We submit that Marye *v.* Parsons, 114 U. S., p. 325, and Williams *v.* Hagood, 98 U. S., p. 72-5, should be restricted to the exact cases therein presented, and not further extended so as to make an unjust discrimination between citizens of South Carolina paying taxes, and citizens of other States who owned the scrip—for sale to tax payers.

In the cases at bar the transcripts of the record do not disclose any legislation of the State of South Carolina affecting the collection of taxes or the offset of scrip thereto, such as were enacted by the State of Virginia, and as are disclosed in the various Virginia coupon cases in this Court. These appeals are therefore relieved from that embarrassment. Why the State of South Carolina did not adopt that mode of impeding the doing of justice to her revenue bond scripholders is apparent because of the reliance of her officials in their acts (as see their respective answers), upon the authority of their Supreme Court in the case of Garry *v.* The State Auditor, 4 South Carolina Supreme Court Reports, p. 311, hereinafter commented on, which case assumed to and did decide on *a purely constitutional question within the jurisdiction of the Federal Courts*, to wit, that that scrip was unconstitutional because it was a bill of credit issued by State authority, and that the act of 2d March, 1872, creating them was therefore unconstitutional under the constitution of the United States. This decision, while it presented an insuperable bar to the Wall street creditors getting any relief in the Courts of that State or even before its Legislature, certainly cannot operate so as to bring our Williams case within the operation of Marye *v.* Parsons, 114 U. S., 325, and prevent

Williams and his co-complainants, from having the highest Federal Court pass upon the two constitutional questions presented on the Record in the Williams case, viz.:

1. Was the act of March 2, 1872, a contract with Williams and Wesley, the bondholders, who either surrendered them or furnished the means whereby they were surrendered, and was the subsequent legislation of South Carolina a violation of that contract and therefore unconstitutional?

2. Was the scrip issued under and in pursuance of that act of March 2, 1872, liable to the imputation of unconstitutionality as a State bill of credit and thereby rendered invalid?

These, we most respectfully urge, are no abstract questions which this Court is not called on under the facts herein presented to decide. They are vital to these New York scrip holders. For, if this Court should feel called on to abnegate its rightful jurisdiction to condemn the decision in Garry *v.* The State Auditor, in 4th South Carolina, p. 311, because Messrs. Williams and Wesley are not taxpayers.

And if this Court should further abnegate its rightful jurisdiction to pass upon the unconstitutionality of the legislation of South Carolina in the repeal of Section 4 or the obstruction of the act of March 2, 1872, creating the said scrip because that the case at bar involves merely "abstract questions," then in truth Messrs. Williams and Wesley are entirely without remedy. They can get no relief in the State Courts of South Carolina, because its highest Court has invalidated the scrip in question as a State bill of credit. They can get no relief in

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III.—THE ACT OF LEGISL
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the highest Federal Court, because their case merely 233
presents "abstract questions."

To be turned around now and to be dismissed in this Court without remedy, save commencing anew and going through the State Courts (encountering the Statute of Limitations), because over 13 years have expired (Sec. 30 and 31, R. S. of South Carolina), with a view of finally appealing from a possible decision made against them in the highest Courts of that State to this Court on the federal questions involved in their cases, is too great a cir- 234
cumlocution.

We most respectfully urge this Court to grapple with our cases and the federal questions presented by them *now*. There is, we respectfully submit, no good reason why they should not do so now.

Then, again, is there not as much damage done to a banker or scrip holder owning such scrip and belonging to another State whose scrip is destroyed in value, as shown in this case, by the unconstitutional legislation of the State making the contract 235
and creating the scrip, and by its officers' acts, justifying themselves under that unconstitutional legislation, as if the said officers had threatened to attach the property of the foreign banker in that State for taxes after he had tendered such scrip to pay them. In the latter case this Court have entertained such jurisdiction. Then why not in the former case?

236

III.—THE ACT OF LEGISLATURE OF SOUTH CAROLINA OF MARCH 2, 1872, UNDER WHICH THESE CERTIFICATES OF INDEBTEDNESS WERE ISSUED, CREATED A CONTRACT BETWEEN THE STATE OF SOUTH CAROLINA AND THE HOLDERS OF THESE CERTIFICATES OF

237 INDEBTEDNESS, WHEN BY MEANS OF THEIR ISSUE THE SAID STATE HAD BECOME POSSESSED OF THE BONDS OF THE BLUE RIDGE RAILROAD COMPANY IN SOUTH CAROLINA, GUARANTEED BY THE STATE, AND THE SECOND FINDING OF LAW OF THE COURT BELOW IS THEREFORE CORRECT.

(*a.*) The Act is an offer by the State, that if certain bonds guaranteed by it are surrendered to
238 it, to give in consideration therefor certain revenue bond scrip to the amount of one million eight hundred thousand dollars, which so given shall be receivable by it in payment of taxes, and for the redemption of which a certain tax *has been levied*. It was the special object of that scheme, by providing extraordinary security and sanctions for the payment of the revenue bond scrip to induce public creditors holding or having liens on said bonds to
239 reduce their claims in the proportion that $1,800,000 of scrip bears to the whole amount of Blue Ridge Railway bonds outstanding in pledge, and to deliver up and exchange them for these new securities, and thus diminish the aggregate indebtedness of the State. The result would enhance the general credit of the State and enable it to meet all its obligations and engagements with more certainty and less liability to failure (see observations of
240 Bradley, J., in 92 U. S. S. Ct. Reps., p. 539).

When the holders of such bonds gave back to the treasurer the bonds they held and received in exchange such a proportion of this revenue bond scrip as they were respectively entitled to under the Act authorizing the issue of it, they did it on the faith that the essential and material features of the scheme

should be carried out, and thereby a contract 241
was made perfect between them and the State, as perfect in all respects as could be required. *The State could contract, and* DID CONTRACT. The recognition of its liability, because of its guaranty and the extinguishment of the liability created by that guaranty, was a good consideration for its promise to provide for its creditors, and the promise was made in terms clear and positive.

242

That the State has admitted its indebtedness, and *is thereby estopped from subsequent denial, that it may compromise its liability*; that in such a compromise it may give security to the party with whom such a compromise is made, that it will repay moneys advanced by receiving the evidences or acknowledgements of such advances in payment of taxes due to it, and will, in addition thereto, cause a tax to be levied to pay such advances, are one and all propositions which cannot 243
be questioned.

In this case, the security, for the accomplishment of the compromise offered by the State consisted in.

(1.) The repayments to be made in the form of a certificate of indebtedness, which would be receivable in payment of taxes.

(2.) That the Controller-General should collect 244
the taxes *levied in the Act itself*, to retire the certificates of indebtedness.

Both these modes of repayment have been recognized as legal and enforceable, and the obligation of the State to execute its agreement has become perfect, it having already on its side enjoyed all

245 the advantages of it. This is a rule as sound in morals as in law.

But the case is only presented in its full light when the position of the parties is truly stated, and the State is made to occupy the position which it really maintains, *of asking the aid of the Court to prevent the parties who advanced* money for it at its request to enable it to get back its bonds *from enforcing what it engaged to do:*
246 having received that aid and having got back its bonds it denies that it is bound by its agreement, and the officers charged with those duties ask to be protected in the refusal to receive the certificates so issued for taxes due to it, and also from the levy of the tax to repay such advances (both of which the State promised when it received the aid by which it got possession of its bonds and that promise was the inducement by which it obtained that aid with which it obtained
247 the possession of its bonds), by insisting that the State cannot be made a party, and they (the State officers), because of that fact should not perform the duties with which they are charged in the very contract itself.

Mason *v.* Gardiner, 4 Bro. Ch. Cases, 436, is an illustration of the principle which must govern here. In that case the defendant filed a cross bill to discover the usury; it was held bad on demurrer because he did not offer to pay what was equitably
248 due.

In Fanning *v.* Dunham, 5 J. C. R., 122, the principle is again strikingly asserted; so in Campbell *v.* Morrison, 7 Paige R., 159, and Rogers *v.* Rathbun, 1 J. C. R., 366.

"He who seeks equity must do equity, and if the "borrower comes into this Court for relief against "his usurious contract, he must do what is right,

"as between the parties, by bringing into Court 249
"the money actually advanced with the legal in-
"terest."

In all cases the Court will set their faces against undue advantages. The heir-at-law is obliged to confirm the jointure of the widow before she will be forced to surrender title deeds. (Petre *v.* Petre, 3 Atk., 511.)

A second mortgagee in possession of title deeds without notice is not forced to deliver them to the first mortgagee except upon payment of his debt. 250
(Head *v.* Edgerton, 3 P. Wms., 280.

Where part of the consideration has been received, it must be repaid before the conveyance will be canceled. (Miller *v.* Colton, 5 Geo. R., 341.)

In Kerr on Frauds and Mistakes, p. 345, it is said: "The usual course of the Court in setting aside a "transaction is to proceed on the maxim that he "who seeks equity must do equity. Instruments "accordingly are either set aside on repayment of "the actual consideration with interest thereon at 251
"a reasonable rate, or are directed to stand as a se-
"curity for the money actually advanced, with in-
"terest thereon at a reasonable rate."

In King *v.* Hamlet, 2 M. and K., 457, the Lord Chancellor said, where the transaction is repudiated the party so doing must not in any respect act upon it so as to alter the situation of the other party or his property:

"A party cannot repudiate a dealing of which he
"voluntarily and freely is availing himself.—Least 252
"of all shall he be permitted to use for his own
"benefit, or, which is the same thing, or in any
"manner place out of his reach for his present ben-
"efit, the property of another, and then to repudi-
"ate the contract by which that property came into
"his possession."

In Billoge *v.* Southee, 9 Hare, 534, the Vice-

253 Chancellor said this transaction cannot stand. A note had been taken by a physician from a sick patient for much more than was due, but the note was declared to be a security for what was really due.

In Byne *v.* Vivian, 5 Ves., Jr., 653, the bill was filed to set aside an annuity for certain objections. The Lord Chancellor set it aside on terms. "The terms of the redemption must be on account of what is due. I consider it a loan. There is not a single case where an annuity has been set aside and an
254 action at law brought for the money in which the account has not been taken.

Castor *v.* Mitchell, 4 W. C. C., 191, failure of vendee to execute a mortgage, because of which vendor sells to another, equity will decree repayment of the amounts paid by vendee.

Rawlins *v.* Wickham, 3 D. and J., 304, may be referred to; there the liability of the defendant was affirmed because of representations of one partner against whom judgment had been recovered.

255 Murray *v.* Charleston, 96 U.S., p. 432, which holds that the provision in the constitution that no State shall pass a law impairing the obligations of contracts, is a limitation upon the taxing power of a State as well as upon all its legislation whatever form it may assume. Therefore a law changing the stipulations of a contract or relieving a debtor from a strict and literal compliance with its requirements enacted by a State in exercise of that power is unconstitutional and void.

256 In Edwards *v.* Kearzey, 96 U.S., 595, which holds that the remedy subsisting in a State when and where a contract is made and is to be performed is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution of the United States, and therefore void.

The legislature of a State does not impair the obligation of a contract by enlarging, limiting or altering the modes of proceeding for enforcing it, provided that the remedy be not withheld nor embarrassed with conditions and restrictions which seriously impair the value of the right. 265

Tennessee *v.* Sneed, 96 U.S., p. 69.
Antoni *v.* Greenhow, 102 U. S., p. 672.
Antoni *v.* Wright, 22 Grattan, 833.

Authority of last case recognized in Wise *v.* Rogers, 24 Grattan, 169, and in Clarke *v.* Tyler, 30 Grattan, p. 134 and 137. 266

Finally, the Supreme Court in Antoni *v.* Greenhow, 107 U. S., p. 770 and 771, after citing the cases of Antoni *v.* Wright, 22 Grattan, 833; Wise *v.* Rogers, 24 Grattan, 169; Clark *v.* Tyler, 30 Grattan, p. 134 and 137, says:

"*Any act of the State which forbids the receipt of these coupons for taxes is a violation of the contract and void as against coupon holders.*" 267

In Cromwell *v.* County of Sac, 96 U. S., 603, this Court holds that although the bonds are purchased at less than their face value, yet the purchaser has the right to set up these claims against the State for their face value and interest.

New Jersey *v.* Yard, 95 U. S., p. 104, holds and gives construction to the right to repeal reserved in all statutes, and says such statutory reservation of the right to repeal, unlike similar constitutional provisions are, only binding on a succeeding legislature so far as it chooses to conform to them; and if it so intends, an irrepealable legislative contract may be made, and it proceeds to discuss in the case at bar the provisions of the Statute before that Court as to whether it amounted to a contract, and as to whether it could be repealed or not. 268

261 The case of Poindexter *v.* Greenhow, 114 U. S., p. 270, is quite conclusive on the doctrine of legislative contract.

So also the other Virginia Coupon cases in same volume.

Williams *v.* Louisiana, 103 U. S., p. 637.

IV.—THIS COURT HAS JURISDICTION OF THE SUBJECT MATTER OF THESE ACTIONS, NOTWITHSTANDING THAT THE STATE OF SOUTH CAROLINA COULD NOT BE MADE A PARTY TO THE ACTIONS. NOTWITHSTANDING THAT SAID STATE DID NOT VOLUNTARILY APPEAR THEREIN, ALTHOUGH ITS APPEARANCE WAS INVITED BY THE RESPECTIVE COMPLAINANTS IN THEIR BILLS OF COMPLAINT (SEE FOL.), AND ITS ATTORNEY-GENERAL HAS APPEARED AND CONDUCTED THE RESPECTIVE DEFENSES FOR THE STATE OFFICERS.

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263

These actions seek to Compel the State officers to perform the duties cast on them by the Because

1st. The Act of the Legislature of the State of South Carolina (Laws of 1872, p. 79), under which these certificates of indebtedness were issued, directed, 1st. Its Treasurer to cause such certificates to be engraved, to sign the same, to perform certain duties with same in taking up its outstanding obligations on the said railroad bonds, and provided that the same will be received in payment of taxes and all other dues to the State, except the special tax levied to pay interest on the public debt.

264

2d. It pledged the faith and funds of the State for the ultimate redemption of said scrip, and required its various county treasurers to receive the same in payment of all taxes levied by the State,

except the special tax levied to pay interest on the 265
public debt.

3d. It required its State Treasurer and all of its other public officers to receive the same in payment of all dues to the State.

4th. It provided, for the redemption of said scrip, an annual tax, which it declared in the same act "*is hereby levied*," of three mills on the dollar in addition to all other taxes, to pay off such certi- 266
ficates, which tax *so levied* was to be collected in the same manner as other taxes are levied.

5th. It required its State Treasurer to retain at the end of each year from their date one-fourth of the amount of the said Treasury scrip required by the act to be issued until all of it be retired, and it further directed said State Treasurer to apply to such purpose exclusively all taxes thereby required to be levied. 267

6th. It also required the State Treasurer to cancel and destroy all the guaranteed bonds surrendered under that act.

This Act, therefore, *imposed a series of duties on the State Treasurer, on the various County Treasurers, and on the other public officers connected with the levying and collection of taxes of the State of South Carolina to be performed*, the performance of which could be appropriately 268
enforced on a proper state of facts by a citizen of South Carolina against such officers in the Courts of that State in the event of there being no adverse decision or legislation (such as has here taken place), either by mandamus or mandatory injunction, or restrained by writ of prohibition, by writ of injunction or coerced by equitable action without

269 regard to the fact as to whether or not the State was a party.

D'Oyley's Case, 1 Brev. (S. C.), 238.
Watson *v.* Mayrant, 1 Rich. (S. C.), Eq. 449.
Com'rs *v.* Lynch, J. McCord (S. C.), p. 170.
Singleton *v.* Com'rs, 2 Bay, S. C., 105.
State *v.* Northeastern R. R. Co., 9 Rich. (S. C.), 24.
270 State *v.* Walker, 5 Richardson, Supt. Ct. Repts., 263.

These cases, cited and taken from the reports of South Carolina, show that its courts have frequently adjudicated that writs of mandamus are proper remedies to enforce the performance by State officers of duties cast on them by Acts of the Legislature of that State.

(*a*) There is no objection to making a State a party
271 to a bill in equity for the purpose of enabling it to appear and protect its rights, although it cannot be compelled to perform any decree which may be made against it.

Garr *v.* Bright, 1 Barb., N. Y. Chanc. R., 157.
Clarke *v.* Barnard, 108 U. S., p. 436.

The complaint is not demurrable because it contains in it an invitation for the State to appear; and
272 it may be left to the option of the State to determine whether they will, not for the purpose of submitting themselves to the coercive power of the Court, but to enable it to arrive at a correct and satisfactory determination. The objection to such joinder, even if taken by demurrer, is premature.

Manning *v.* State of Nicaragua, 14 How. Pr. R. of New York, 517.

2. The present complainant Williams, a citizen of the State of New York, in order to gain such relief *against the said State officers, could proceed in the Federal Courts therefor.* In the latter tribunals he could have the benefit of every right that the jurisdiction of the State Court, properly and lawfully exercised, could give him, in addition to what was the exclusive province of the Federal Courts to determine. 273

3. On the case here presented we submit that it is proper for the Court to adjudge: 274

(*a*) That the certificates of indebtedness issued under the Act of 1872 are not bills of credit within the meaning of the Constitution of the United States.

(*b*) That the compromise offered by the State of South Carolina, in the Act of March 2d, 1872, when accepted and acted upon, so that by means of the treasury certificates of indebtedness, called revenue bond scrip, the bonds guaranteed by the State were restored to it, it became *a valid contract binding on the State.* 275

(*c*) That the agreement to receive such certificates, called revenue bond scrip, for taxes, and the legislative declaration *that a tax was levied* for the redemption of the same, *constituted on the part of the State a binding obligation to do, or cause to be done, these things which were lawful, and were, in fact, the security for the performance of so much of its contract as was on the part of the State promised and agreed to be done.* 276

(*d*) *To adjudge and determine that the repealing Acts of October 22d, 1873, and of December 22d, 1873, were laws impairing the obligation of the contract entered into by and between the*

277 *State and Messrs. Williams and Wesley, and were to that extent unconstitutional, and not in the way of the relief desired by the complainants here.*

(*f.*) Such measure of relief as this Court feels it within its jurisdiction to give against the State Officers of that State should be given. In administering that relief the cases become of equity cognizance, because of the principle
278 of mandatory injunction; because of the necessity to take and state an account as between the various holders of the said scrip and as to the one-fourth thereof required to be retired each year; and also because it enjoined the County Treasurers to receive such Treasury Certificates; also because it enjoined the Comptroller-General *to cease to refuse to* receive the same for taxes and dues to the State; and also because mandamus would not be granted in the
279 face of the Repealing Acts until they were adjudged to be unconstitutional, and also because mandamus could not be granted until the case of Garry *v.* The State Auditor in 4 So. Ca. Rep., p. 351, was overruled. Equitable remedies are proper in such cases.

See observations of this Court in Allen *v.* Baltimore & Ohio R. R. Co., 114 U. S., pp. 315, 316.

280 See Transp. Co. *v.* Parkersburgh, 107 U. S., 691, 695.

Tomlinson *v.* Branch, 15 Wall., 460.

See 114 U. S., 295.

Cummings *v.* Nat. B'k, 101 U. S., 153, 157.

Memphis R. R. *v.* Railroad Comp'y, 112 U. S., 609; 113 U. S., 465.

Let us suppose that no decision had been made

by the Supreme Court of South Carolina adverse 281
to the alleged constitutionality of the Act of 1872, and that no legislation had taken place on the part of the State of South Carolina against that Act, and that a citizen of South Carolina desired in its Courts to enforce the duties imposed on its State Treasurer and its County Treasurer under the last named Act.

In what shape or form would it have been necessary to make the State a party to his suit in order to obtain his relief? What relief could the State 282
itself as a corporate body give or deny him? *Not a particle!* His only relief would be gained by proceedings in the Courts of that State to coerce their State and County officers to perform their duties imposed on them by the State Act of 1872.

In asserting his rights, it would not be proper for such litigant to make the State of South Carolina a party. It would be highly improper to do so. *His proper adversaries would be the State and County officers who refused to perform the duties cast on* 283
them by that Statute.

(*g.*) Such being the case, how can a subsequent Act, or series of Acts, passed by the Legislature of the State of S. Carolina, which are subversive of the binding obligations of the contract created by the Act of March 2d, 1872, and are therefore unconstitutional, deprive the supposed litigant of his rights, acquired under the original Acts? How can a decision of its highest Court, passing erroneously on a Federal Constitution- 284
al question, and which must be overruled in order to sustain mandamus or other action in its State Courts, render it necessary to make the State a party for that purpose?

If it be maintained that the State of South Carolina must be a party, to enable the Court below to properly decide that her legislation of

285 1873 was a violation of the binding obligation of the contract created by the Act of 1872, then that ruling would ever prevent a subsequent legislative Act from being adjudged to be a violation of the binding obligations of a contract, inasmuch as under Art. 11 of the amendment of the Constitution of the United States the State of South Carolina never could be made a party at the suit of a private citizen of the same or of another State in the Federal Courts, in
286 order to have the unconstitutionality determined.

(*h.*) This question has come up in different forms in our Federal Courts.

McComb *v.* Board of Liquidation ; 2 Woods, 48.

Same case on Appeal, 92 U. S. C. R., 531.

Davis *v.* Gray, 16 Wallace, 203, and opinion, p. 220, citing all the cases.

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Georgia *v.* Jessup, 106 U. S., p. 448.

Osborne *v.* The Bank of U. S., 9 Wheat., 738.

Clark *v.* Barnard, 108 U. S., 436.

Cunningham *v.* M. & B. R. R. Co., 109 U. S., 446.

In 9 Wheat., 738, it was determined that the Circuit Courts of the United States have jurisdiction of a bill brought by the Bank of
288 the United States for the purpose of protecting the bank in the exercise of its franchises which are threatened to be invaded under the unconstitutional laws of a State; and as the State itself cannot, according to the 11th Amendment of the Constiution, be made a party defendant to the suit, it may be maintained against the officers and agents of

the State who are intrusted with the execution of 289
such laws.

Swazy *v.* N. C. R. R. Co., 1 Am. L. T. R. U. S., 359.

In Rees *v.* Watertown, 19 Wall., p. 107, this Court, three judges dissenting, held that it would not sustain a bill in equity which required the Federal Courts to exercise the power to appoint the marshall to levy and collect the tax which the corporate authorities refused to do in the face of 290
the writs of mandamus, nor to subject taxable property situate within the corporate limits of the city in any way to *an assessment* in order to pay the judgment.

But that denial was on a principle not applicable to the present case. In the case at bar the *tax had been provided for*, and in the Act itself these words were used, viz.: "IS HEREBY LEVIED." So that under the other provisions of the same Act, *the County Treasurers could be required to* 291
receive them in payment of taxes levied except in the excepted case.

(19 Wall., 655).

The State Treasurer is required to retire at the end of each year from their date one-fourth of the amount of treasury scrip thereby authorized to be issued, until all of it shall be retired, and to apply to such purpose exclusively the taxes required to be levied. 292

All of this relief involves the taking and stating an account, which is the proper function of a bill in equity. It also involves the investigation of the rights, titles and considerations paid by all the parties who came in on the order of reference and proved their various scrips, or who will be ordered

293 to come in by the final decree herein, thus avoiding a multiplicity of suits.

(*i*) In the Board of Liquidation *v.* McComb, 92 U. S. Ct. Rep., p. 541, opinion, Judge Bradley sums up the principle in these words, viz: "But it has been well settled that when a plain official duty requiring no exercise of discretion is to be performed, and performance is refused, any person who will sustain personal injury
294 thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it. In such cases the writs of mandamus and injunction are somewhat correlative to each other. In either case, if the officer plead the authority of an unconstitutional law for the non-performance or violation of his duty, it will not prevent the issuing of the writ. An unconstitutional law will be treated by the Courts as null and void."

295 Osborn *v.* Bank of the U. S., 9 Wheat., 859.
Davis *v.* Gray, 16 Wall., 220.

Mr. High, in his work on "Extraordinary Legal Remedies," finds in our American system great similarities between the remedies of injunction and mandamus. See Secs. 5 and 6 of that work. See also High on Injunction, Secs. 796 to 809.

See Murray *v.* Charleston, 96 U. S., p. 432.
296 Edwards *v.* Kearzey, 96 U. S., 595.
Tennessee *v.* Sneed, 96 U. S., p. 69.
Keith *v.* Clarke, 96 U. S., 454.
Allen *v.* Baltimore & Ohio R. R., 114 U. S., pp. 315, 316.
Transp. Co. *v.* Parkersburgh, 107 U. S., 691, 695.
Tomlinson *v.* Brush, 15 Wall., 460.

See 114 U. S., 295, on Equitable Reme- 297
dies.
Cummings *v.* Nat. Bk., 101 U. S., 153,157.

V.—IT MAY WELL BE THAT THEY, THE APPELLATE COURT, MAY COME TO THE CONCLUSION IN THESE CASES THAT THEY CANNOT GIVE ALL THE RELIEF PRAYED FOR AND AWARDED IN THE COURT BELOW, AND MAY TO THAT EXTENT MODIFY THE DECREES 298
BELOW.

Our conclusions are:

1. That the State itself, in its capacity *as a State* could never be made *without its consent* a party to a suit in any United States Court. This is the point of Cunningham *v.* M. & B. R. R. Co., 109 U. S., 446, and of Georgia *v.* Jessup, 106 U. S., 448.

2. That the constitutionality of the acts of a 299
Legislature of a State, and the legality of the acts of its officers thereunder, and the question of a binding contract could all be tried and determined, and the constitutionality of the scrip in question as a bill of credit in suits to which the State is not a party, the State having an opportunity to intervene in the suit and failing to do so. This is what is decided in U. S. *v.* Lee, 106 U. S., p. See middle of p. 215.

300
Poindexter *v.* Greenhow, 114 U. S., 270.
Davis *v.* Gray, 16 Wall., 203.
Board of Liquidation *v.* McComb, 92 U. S., 531.

3. That where there is no constitutional law forbidding an act upon the part of State officer, and where the legal duty of such office directs the

301 performance of such act, he can be compelled to perform that act by mandamus or mandatory injunction at the suit of private individual in the U. S. Court. Of course where the residence of such private individual, and the amount involved or the character of the federal questions involved, or the fact that the complainant is an assignee in bankruptcy give the U. S. Court jurisdiction of the subject matter.

302 Cunningham *v.* Macon & B. R. R. Co., 109 U. S., 454, quoting and approving of observations of Bradley, Justice, in 92 U. S., p. 531.

4. That where the performance of an act by a State officer is forbidden by subsequent statute (as the reception of Blue Ridge Scrip in payment of taxes or other debts due the State), and *such subsequent statute is valid and constitutional*, no Court can compel that officer to do that act; and this
303 is what Louisiana *v.* Jumel, 107 U. S., 712, decides.

Cunningham *v.* M. & B. R. R. Co., 109 U. S., 454.

5. That the tender of payment of a debt or tax in a medium, which according to constitutional law is a legal tender for the payment of that debt or tax, had the same effect as the tender of gold in payment of an ordinary debt, and hence the tender of R. B. Scrip in payment of taxes laid the ground
304 work for an injunction restraining the collection of that tax—or restraining future or other refusals to receive such scrip on the part of State officer.

Poindexter *v.* Greenhow, 114 U. S., p. 270.

See Allen *v.* Baltimore & Ohio R. C. R. Co., 114 U. S., 311, and the reasoning of the Court on the remedy by injunction, pp. 315, 316.

6. Judge Bond's decision, delivered at Richmond 305
in August, 1883, in Virginia Coupons Cases, seem to be the law, and the result of all the decisions in the U. S. Supreme Courts.

Antoni *v.* Greenhow, 107 U. S., p. 769, expresses nothing that conflicts with said decision, and in fact is authority for it.

7. What we more particularly desire in our cases *is an authoritative declaration of this Court that the act of March 2d*, 1872, *connected with the facts* 306
shown, establishes a contract between the scrip holders and the State, such as is claimed here, that such scrip are legal and valid obligations on the part of the State of South Carolina, and receivable for the taxes named therein, and that the subsequent legislation of the State of South Carolina, repealing the 4th Section of that act or interfering with its beneficial operation, be declared to be unconstitutional and void, so far as *bona fide* scrip holders of this scrip. And that said scrip are not 307
bills of credit issued by the State.

Upon such a judgment of this Court (if this Court concludes that it can give no other relief) the appellees can go into the Courts of South Carolina, and by mandamus or mandatory injunction get their relief. In the face of the decision of Garry *v.* The State Auditor, 4 South Carolina Supe. Ct. Rep., p. 311, they cannot do so now.

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VI.—BUT IT WAS CLAIMED THAT THE STATE SHOULD BE MADE A PARTY, AND THAT UNTIL SO MADE THE RESPECTIVE BILLS ARE DEFECTIVE BECAUSE OF THE WANT OF PARTIES.

(*a.*) The respective complainants cannot make the

309 State a party. The only person who can make the State a party is the Attorney-General of that State, *and it is he who complains that the State is not a party.* The complainant has paved the way for the State to come in. He has asked that the State, upon the application of the Attorney-General, may come in and be made a party (fol.) Why does not the Attorney-General ask, *if he so desires*, that the State shall be made a party? If the State
310 should be made a party and is not, *it is the State's officers and not the complainant who is in default.* But it is not from the experience of our own times that the Courts of the United States are to learn that the wholesome judgment of the Supreme Court that a State shall no more impair the obligation of its contract than any private person WOULD BE IDLE *unless it could coerce the officer of the State to do that which is the performance of the obligation of the State*
311 *under its contract.* And, therefore, although the State is, in its sovereign capacity, not subject to the jurisdiction of the Courts, unless it shall so submit itself, yet in a matter of contract, when the State has bound itself to the performance of certain acts, and these acts are to be done by one of its servants or agents, the Supreme Court *has acted directly upon such servants or agents, and forced them to do that which the State had bound ~~itself~~ to do.* If it
312 were otherwise, there would be many exhibitions of what that Court has said would be solemn mockery.

(*b.*) Something is said in the defendant's answer (fol.), that application should be made to the legislature for relief. *It is because of the action of the legislature that complaint is made;*

and one of the modes in this case in which re- 313
lief is prayed for is that this Court should declare void the acts of that legislature, by which the securities given to those who trusted to its offers for compromise have been made as valueless as its promises have been. *To that body appeals have been made and made without effect.* The Attorney-General of the State, who appeared in the Williams' case before the U. S. Circuit Court, in May, 1875, and was the cause of his defeat there, in his annual report 314
in the fall of 1875, to the legislature of that State, expressed the opinion that the case, so far as it is related to those whose money had directly contributed to relieve the State from its guaranty and secure its possession of its bonds, was one which commended itself to the consideration of the legislature.

The legislature ignored his recommendation. The Legislature of South Carolina, after the decision of Williams *v.* Haygood, in 98 U. S., p. 315
72, also ignored the settlement of Messrs. Williams, and Wesley's claims, although it was plainly intimated by this Court, in their opinion in this case, that the legislation of that State in 1873 was a plain violation of the contract made by them by the Statute of March 2, 1872.

(*c.*) Such is the case made under these respective bills. *It is a case of contract, the obligation of which is impaired by the act of the party who* 316
HAS RECEIVED THE BENEFIT OF THE CONTRACT. The contract, so far as the State is concerned, among other things, is that the same will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt. In addition to this the Act of 1872 declares that for the redemption of

317 those certificates or scrip "an annual tax on the assessed value of all taxable property, of three mills on the dollar, *is hereby levied.*"

(*d.*) The certificate of indebtedness or Revenue Bond scrip now before the Court in the case represented on this argument are not only in form consistent with the directions given in regard to the same, but represent certain advances on or use of money for the benefit of the
318 State, in consideration of which such certificate or scrip was delivered, which did accomplish the very end and object for which it was to be issued and did restore to the State its guaranty and did produce the surrender of the bonds. Therefore it is claimed that the Revenue Bond Scrip is good in itself *and cannot be questioned by the State*; and if we are right that the subsequent legislation of South Carolina in 1873 violates that contract then the officers of that
319 State may be coerced to perform the duties enjoined on them by that Act of 1872, and the State is not a necessary party to a litigation properly brought to compel them to *cease from refusing to receive same for taxes* and to establish the contract, the constitutionality of the scrip and the unconstitutionality of the acts of the legislature repudiating it.

But if it were otherwise, and because of its form, such certificate or scrip could not be en-
320 forced, then under the prayer for general relief this Court will give that relief which, according to the case made in the bill, may be proper, and THE LEAST MEASURE OF RELIEF WOULD BE TO DECLARE AND ESTABLISH THE RIGHT OF THE COMPLAINANTS, and, as far as this Court could do, to enforce the binding nature of the contract and the validity of the scrip.

ordering and by the proper officers of the State to receive the Scrip as provided for in the contract

To decide what were their rights under the 321
contract in the Act of 1872 is the smallest measure of relief the Court should give to the holders *bona fide* of the scrip in this case.

Kerr on Frauds, 343.

That the State having accepted the fruits of an offer made by it, is bound, on its part, to do that which it promised, if that which it promised be neither immoral or illegal, cannot be disputed. That, if what is promised by it has become illegal or immoral, 322
because of some act done by the State or its agents or servants, *the State cannot retain the fruits of its offer, and yet refuse to do what it promised, because of the alleged consequences of its own acts so done*, is too plain for dispute.

VII.—THIS INHIBITION OF A STATE REGARDING 323
THE OBLIGATIONS OF A CONTRACT EMBRACES JUDICIAL DECISIONS AS WELL AS "LEGISLATION."

1. In the Township of Pine Grove *v.* Talcott, 19 Wallace, 666, this Court said: "The national "Constitution forbids the State to pass laws "impairing the obligation of contracts. In "cases properly brought before us that end can "be accomplished no more by judicial decision "than by legislation. Were we to yield in 324
"cases like this to the authority of the decis-"ions of the Courts of the respective States, we "should abdicate the performance of one of the "most important duties with which this tribu-"nal is charged, and disappoint the wise and "salutary policy of the framers of the consti-"tution in providing for the erection of an in-

325 "dependent Federal judiciary. The exercise "of our appellate jurisdiction would be but a "solemn mockery. Local tribunals are often "sensibly affected, however honest and well- "meaning they may be, by influences swerving "their better judgment, where our national "Courts are based on the eternal foundation of "constitutional law and right."

2. In the case of Morton *v.* the Comptroller-Gene-
326 ral, April Term, 1873, reported in 4th South Carolina Rept., p. 430, the Supreme Court of South Carolina decided that where provision is made for the levy of an annual tax, as in the Consolidation Act, the inhibition of the Constitution of the U. S., that "no State shall pass any law impairing the obligation of contracts," prevents the legislature of *the* State from defrauding the public creditor of his remedy to enforce the collection of the tax under the law
327 in force at the passage of the Act. The Court further decided that such a provision for an annual tax, *both levies the tax and appropriates it to the payment of interest, and that no further legislation is necessary.* (See on the unconstitutionality of the repeal of an inherent part of a contract—the case of Edwards *v.* Kearsy, 96 U. S., 595; Keith *v.* Clarke, 97 U. S. R., 454.

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VIII.—THIS CASE BELONGS TO A CLASS OF CASES CONCERNING WHICH THE SUPREME COURT HAS SAID THAT "IT BELONGS TO THE DOMAIN OF GENERAL "JURISPRUDENCE. IN THIS CLASS OF CASES, THIS "COURT IS NOT BOUND BY THE JUDGMENTS OF THE

"COURTS OF THE STATES WHERE THE CASES ARISE. 329
"IT MUST HEAR AND DETERMINE FOR ITSELF. HERE
"COMMERCIAL SECURITIES ARE INVOLVED."

(*a*) "When a corporation has power under any cir-
"cumstances to issue negotiable securities, the
"*bona fide* holder has a right to presume that
"they were issued under the circumstances
"which gave the requisite authority, and they
"are no more liable to be impeached for any
"infirmity in the hands of such a holder than 330
"any other commercial paper." (Gelpeche *v.* Dubuque, 1 Wall., 203.

(*b*) "It is alike the duty of that (State) Court and
"of this to decide the questions involved in this
"class of cases, as in all others when presented
"for decision. This duty carries with it inves-
"tigation, reflection, and the exercise of judg-
"ment. It cannot be performed on our part by
"blindly following in the footsteps of others, 331
"and substituting their judgment for our own.
"Were we to accept such a solution, we should
"abdicate the performance of a solemn duty,
"betray a sacred trust committed to our charge,
"and defeat the wise and provident policy of
"the Constitution which called this Court into
"existence."

Butz *v.* City of Muscatine, 8 Wall., 575.

(*c*) It cannot then be held otherwise than that these 332
bonds guaranteed by the State are binding contracts on the part of the State with such parties as hold them *bona fide* for advances made upon them as security. In the discussion of this question we find application for the language of Mr. Sedgewick, quoted in 19 Wall., p. 678, that "*one who has the benefit of an agree-*

333 *ment in violation of a contract cannot question its validity.* It would be (as is well said) in the highest degree inequitable and unjust to permit the defendant to repudiate a contract the fruits of which he retains."

It would be difficult to find a defense more inequitable and unjust than this. The State gives its obligation to retire a liability for a very much greater amount, and then having received relief from the larger liability, and having obtained possession of its guaranty, 334 *denies its obligation to those who trusted to its faith, and in exchange for its guaranty on these bonds received its offered compromise in its Treasury Certificates of Indebtedness.*

In 1872 the Legislature protects itself from its admitted liability for that guaranty *by a compromise;* the compromise is accepted; the bonds retired, and when the question of the obligation 335 arising from the compromise is presented in its own Courts, the officers of the State attempt to take protection from the State's liability *under an opinion of the Supreme Court of their own State, on the ground of the alleged unconstitutionality of their law.*

Is the contract of the State to compromise its liability for much less than the half for which it admitted itself to be bound against the highest law of the land?

336 Is the promise to abide by and perform its contract not only binding, but one which this Court will not even allow to be carried into effect?

(*d*) The State issues its bills receivable; these it receives for its taxes. It issues its certificate for past indebtedness; these it receives for taxes.

It puts out coupons for interest on its bonds; these it receives for taxes. These are not challenged, but it gives to him who has lent money on the faith of its guaranty. admitting its liability for it, another security, which it promises to receive for taxes, and then after it has got back its guaranty denies the obligation of this substituted security, because, it says, the guaranty it redeemed was not valid, and if the guaranty was valid, and therefore its surrender a good consideration, the certificate of indebtedness, which it issued to get back that guaranty, is a bill of credit, and therefore it cannot receive it for taxes. The obligation to do justice rests upon all persons, natural and artificial, and if a county obtains money or property of others without authority, the law, independent of any Statute, will compel restitution or compensation. (March *v.* Fulton Co., 10 Wall., 684, Opn). 353 354 355

IX.—THE DEFENCE SET UP IN THE RESPECTIVE ANSWERS, "THAT SO MUCH OF THE ACT OF SEPTEMBER, 1868, AS PROVIDED THAT THE BONDS OF THE "BLUE RIDGE RAILROAD COMPANY IN SOUTH "CAROLINA, GUARANTEED BY THE STATE, SHALL "NOT BE USED UNLESS UPON THE APPLICATION TO "THE CONGRESS OF THE UNITED STATES, OR TO "PRIVATE CAPITALISTS, THE AMOUNT OF THREE MILLIONS OF DOLLARS IN CURRENCY, OR SO MUCH AS "MAY BE NECESSARY, SHALL BE FURNISHED IN EXCHANGE OR UPON THE SECURITY OF SAID BONDS, "WAS NOTICE TO ALL PERSONS DEALING OR ABOUT "TO DEAL WITH THE SAID BONDS, AND THE SAID 356

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341 "BONDS WERE DEALT WITH IN VIOLATION OF "THAT CONDITION, AND GAVE NO RIGHT TO THE "HOLDER."

THIS POSITION, SO FAR AS THE COMPLAINANTS WILLIAMS AND WESLEY ARE CONCERNED, IS UNTENABLE.

(*a*) The Act of March 2d, 1872, is a recognition by the State of South Carolina in the strongest terms (because it was passed over the objections of the Executive of that State) that the use that had been made of those bonds was proper, because it admitted the State's liability for them. *It shows that they knew that the bonds were in pledge, for it recites that they were pledged in the City of New York and elsewhere.* It proposed this method of issuing this Revenue Bond Scrip for the purpose of being relieved of its liability by a compromise and of retiring the bonds so that they might be cancelled and destroyed.

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Town of Colona *v.* Eaves, 92 U. S. S., C. Rep., 484.

Knox *v.* Aspinwall, 21 How., 544.

Bissell *v.* Jefferson, 24 How., 287.

County of Moultrie *v.* Rockingham's Bk., 92 U. S., 635.

S. P. in the Bond Debt Cases, 12 So. Car Rp., 275.

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(*b*) These New York bankers, when applied to, the one to surrender the bonds he owned and the other to advance money to redeem the bonds pledged in that city, *were only called on to examine the Act of* 1872, *to deal with the State Treasurer, representing the State, and*

with the President of the Blue Ridge Railroad Company, representing that Company. 345

Cooper *v.* The Town of Thompson, 13 Blatch., 434.

(*c*) To the objection that these bonds were improperly issued or used by the Blue Ridge Railroad Company, the reply is more than sufficient.

The Act of 15th September, 1868, declared 346
"that the conditions imposed upon said in-
"dorsements by said section seven (referring
" to the Act of 1854) have become impossible
" and injudicious."

Then followed the condition substituted for the condition so repealed, " that the bonds, or any part thereof, shall not be used unless upon the express condition that upon application to the Congress of the United States or to private capitalists, the amount of three millions of dol- 347
lars in currency, *or so much of that sum as may be necessary*, shall be furnished in exchange *or upon the security of said bonds.*"

If any of these bonds were sold they have been restored to the State, and revenue bond scrip received for the amount given for them. The presumption in favor of the holder is that in every case " so much of the three millions as may be necessary" were obtained by the Blue Ridge Railroad Company in South Carolina 348
upon " the security of said bonds." (See Patterson's testimony, fol. 67).

Transcript of record in Williams' case.

(*d*) The private capitalist who lent to the Blue Ridge Railroad Company sums of money upon the security of these bonds, was not bound to

333 349 show that the amount so lent was necessary. If the president and officrs of that corporation applied for a loan of money, the lender, if he did not know otherwise, was well entitled to the benefit of the presumption that it was necessary. To hold otherwise would be to declare that the bonds should not be used as security for loans to be made, for the lender would in such case be the guarantor of the necessity for the loan. But the State, when it placed its

334 350 guaranty under the control of the corporation, trusted to the corporation or its officers for the proper use to be made of it. (See observations of the Court in the Railroad *v.* Otoe, 16 Wall, 667).

In the Bond Debt Cases, 12 South Carolina Rep., p. 200, holds that bonds issued by a State through its duly appointed officers, under the authority of its laws, professing upon their face that the conditions imposed by the State

335 351 authorizing their issue have been complied with, are valid obligations of the State in the hands of bona fide purchasers, although such conditions have not been complied with, or although in their issue gross frauds were perpetrated by the agents of the State. (See Opn. p. 275).

(*e*) That the State did have the power to put its guaranty on these bonds, is as plain as is the

330 352 fact that the guaranty was so placed. That in the Act of the 2d March, 1872, it recognized the obligation of that guaranty, and provided a mode to extinguish the guaranty, is so plainly written that it cannot be denied.

The denial, therefore, of the obligation created by these bonds, is, in a legal aspect, wholly idle, for it involves the proposition that

sua sponte the Court will declare that invalid 353
which the Legislature of 1872 distinctly af
firmed to be valid and binding upon that State,
and offered a compromise therefor in the
preamble.

(*f.*) But, if the fact were so that there had been
fraud in or upon the Legislature, no Court could
affect *the rights of bona fide holders* by enter-
taining that question. And upon this point
nothing can be added to the language of the 354
Supreme Court in Fletcher *v.* Peck, 6 Cranch,
87, and other cases which will be hereafter par
ticularly referred to.

(*g.*) In the State *v.* Cardozo, Treasurer, 5 Richard-
son, Sup. Ct. Rep. (S. C. Reps.) p. , the
Supreme Court of South Carolina decide that a
claim against the State *ordered to be paid by*
the Legislature cannot be questioned before the
Courts upon grounds imputing wrong or im- 355
proper motives to the Legislature.

See

Pendleton Co. *v.* Amy, 13 Wallace, p. 297.
Grandchute *v.* Winegar, 15 Wallace, p. 355.
City of Lexington *v.* Butler, 14 Wallace,
283.
Moran *v.* Miami County, 2 Black, U. S. C.
R., p. 722.
Wood *v.* Lawrence Co., 1 Black, 386.
Mercer Co. *v.* Hackett, 1 Wallace, 83. 356
Commonwealth *v.* Alleghany Co., 32 Penn.,
Rep., p. 219.

In this view of the case it becomes therefore un-
necessary to consider whether or not the Act of
March 6, 1871, repealing the condition contained in
the Act of 1868 were unconstitutional under the pro-

visions of Sec. 29, Art. 2, Constitution of S. Ca., 1868, although that point was forcibly pressed below.

X.—In the case now before the Court the Legislature in 1872, in the very Act which authorized the issue of this scrip, recognized and affirmed its liability because of its guaranty of these bonds, and instead of a notice that the condition upon which its guaranty was given had been violated, and that the State was no longer bound, declared "*that the "present condition of the finances of the State and "of said companies is such as to make the further "continuance of said bonds on the market inexpe-"dient and unadvisable and a serious injury and "prejudice to the credit of the State.* That the existence of the said four millions of bonds so guaranteed creates a large liability upon the State, which the Treasurer may be required to meet at unforeseen and inopportune times; that "the liability of the State on account of such guaranty should be faithfully met and discharged;" and with these admissions it then provides the issue of these certificates of indebtedness, called them revenue bond scrip, the issue of which was provided and intended to secure the recovery and destruction of the bonds and coupons of the said company *now pledged in the City of New York* and elsewhere.

(*a.*) With great reason, then, may be applied to this 361
case the language of the Supreme Court of Pennsylvania (32 Penn. Rep., p. 219, Commonwealth *v.* Alleghany Co.): "It was a public "loan on the faith of the public credit, * * * "and there is no sentiment in which mankind "are more united than in the inviolability of "such pledges." * * * "In the revolution "of governments whatever dynasty goes up or "down, the public debt remains, and is always "recognized by the existing government. The 632
"strongest State of Europe is not strong "enough to repudiate her debt. The weakest "and most contemptible is not base enough."

See observations of Ch. J. Lowrie in same case, referring to the objection to the Act because of unconstitutionality.

These bonds had been pledged for loans made to the Blue Ridge Railroad Company. It had power 363
to pledge them. The State admits the power to pledge when it makes its offer to redeem them from the pledgee. If the condition in regard to the sale of the bonds for less than the par value could affect a purchaser, a reason may be alleged in the case of a purchase which has not any application to the case of a pledge; for a sale for less than the par might obligate the State for the whole amount, *but the pledge does not conclude the State from a redemption of the bond for any larger sum than that for* 364
which the bond is pledged. And the difference is admitted by the State itself when, in the Act of 1872, it recognized its liability for the guaranty of these bonds, *then pledged in New York and elsewhere*. The issue of the revenue bond scrip was for the express purpose of redeeming the bonds so pledged; and the question of the validity of said

365 sale or pledge cannot be made when all the bonds that the State desired to redeem, and be again pos-
333 sessor of, *have been restored to it and cancelled and destroyed by it.*

XI.—THE OBJECTIONS TAKEN IN THE RESPECTIVE ANSWERS, THAT THE ACT OF MARCH 2D, 1872, OF
366 THE LEGISLATURE OF THE STATE OF SOUTH CAROLINA, WAS UNCONSTITUTIONAL BY THE CONSTITU-
3 TION OF THE UNITED STATES, AND THEREFORE INVALID, AND THAT THE SAME HAD BEEN SO DECLARED IN THE CASE OF GARY AGAINST THE SEVERAL COUNTY TREASURERS OF THE SAID STATE, ARE UNTENABLE.

Olcott *v.* The Supervisors, 16 Wall., 678.

367 1st. Although no proof of such adjudication has been offered to be given, yet we have no hesitation in admitting that a decision was made of the character hereinafter stated. The case is reported in 4th South Carolina Reports, p. 311, from which we take most of this statement.

This case may be said to be the impairing of the obligation of the contract of March 2, 1872, by judicial decision.

368 The case was Edwin Gary, as State Auditor, against Niles G. Parker, as State Treasurer. The judgment prayed for was, 1st. To prevent the State Treasurer from issuing this scrip. 2d. To prevent State Treasurer and County Treasurers from receiving it for past due taxes. 3d. To restrain the treasurer from paying it out. 4th. From receiving the scrip for the taxes of 1872, or any other time. No

relief asked *concerning the holders of these certifi-* 369
cates or scrip.

As to the first, the State Treasurer had already issued the scrip, the bonds were already redeemed. The Act of 1872 had accomplished its purpose in having the bonds so guaranteed by the State redeemed, and their proceeding was then to accomplish another purpose, to extinguish the obligations by means of which the bonds had been redeemed; some of the holders of the revenue bond scrip applied for leave to be heard in regard to the matter 370
of the complaint in that case. Mr. Williams, the present complainant, was not among the number, nor were the assignees of the Blue Ridge Railroad Company, nor was Mr. Wesley. *No judgment was prayed against them. No other judgment could have been prayed against them than that they should be enjoined from parting with the scrip, and that the county auditor should be prevented from receiving it from the holders of it for taxes, and no judgment could have been made against* 371
them without the State or its officers offering to repay them what they had advanced for the use of the State. Therefore the complaint was not amended as to them. No judgment was asked as to them, and the judgment of the Supreme Court *that the revenue bond scrip was a bill of credit;* that the treasurer should not receive it for taxes; that the treasurer should not pay it out; and all that is asked for in the complaint in regard to the agents of the State is, we submit, no bar 372
to these proceedings. The State officer may bring to this Court notice of the decision of the Supreme Court of the State in a suit against him; and that decision, while it stands unreversed, is a rule for him, but that is not a bar in regard to one against whom no decree was prayed or asked for, and against whom no decree could be made without

compensation, *and who had no right to appeal from the decree when made, as he was no party to the record, was only one of a class affected by the result.* The decree of the Supreme Court of the State referred to in the answer, to be effectual as a plea in bar in this proceeding, must be *res adjudicata* as to every holder of the revenue bond scrip, *or it is nothing more than the opinion of the Supreme Court of South Carolina upon the provision of the Constitution of the United States concerning a bill of credit.*

It is not *res adjudicata* for the subject-matter of the suits in each of these cases, and in that referred to in the respective answers is not the same, nor are the parties the same. The prayers in these cases relate to matters not only before the Courts of the State, *but it asks relief from certain acts of the Legislature affecting the rights of the holders of this scrip passed after the decree of the Supreme Court.* It asks that the issue of these certificates or scrip be declared the evidence of a contract between the State and the holders of it *bona fide* and for value; holders whose ownership is directly connected with the purpose which the State contemplated in the issue thereof, and who have caused the bonds guaranteed by the State to be delivered back to it and its liability because of that guaranty extinguished, and this was the consideration which the State received for the issue of that scrip. It asks that the repeal by the Legislature of the several provisions of the Act of 1872, which gave value to the certificates or scrip issued by the State and by reason of which the holders of the scrip could enforce the contract made by the State with them, may be declared unconstitutional. It asks that the Comptroller-General may be required to levy a tax provided in the Act of 1872. That the County Treasurer may be required to receive these treasury

certificates of indebtedness or scrip for taxes due to 377
the State except taxes levied to pay interest on the public debt. The County Treasurer refusing to accept such tender shall be enjoined from selling property or otherwise enforcing payment of such taxes. And the bill still further asks for a mandatory injunction requiring the Comptroller-General *to cease from refusing to levy* the tax for retiring said certificates of indebtedness, and the County Treasurer to *cease from refusing to receive* the same for taxes and dues from the State excepting taxes to 378
pay the debt, and further asks for general relief. There is not, therefore, in the complaint in the Courts of the State brought into the discussion or adjudged by these Courts, a single matter which in this bill is set forth as the matter for relief. Not one of these could be adjudged in the State Courts, for not one of them is set forth in the complaint as matter for judgment of the Court. To sustain the pleas of *res adjudicata* the parties and the matter before the Court must be same, and *it would have* 379
been wrong if the Courts of the State would have relieved the State from its liability without compelling it to give back to the holders of these certificates or scrip *what they advanced to the State.*

Then it seems to be settled that the decree of the Supreme Court of the State of South Carolina, upon the question whether such certificate or scrip is violative of the Constitution of the United States, because alleged to be a bill of credit, cannot bind this Court when the consideration of the question 380
impairing the obligation of a contract between the State and citizens of another State comes up, and in that case it is compelled to decide a case arising under the Constitution of the United States and pertaining to the judicial power vested in the Courts of the United States. If in relation to a question concerning the obligation of a contract, the Supreme

381 Court has said that to decide that question because a State Court may have made a decision on the same point, would be to abandon the exercise of its jurisdiction in a matter within its peculiar cognizance. With how much more force will that declaration come from this Court when it is asked to decide a question of contract which the State Court has said is in violation of the Constitution of the United States.

382 Jenett *v.* Howe, 2 Am. L. T. R. U. S., 87.
Town of Venice *v.* Murdoch, 92 U. S., 494.
Township of Pine River *v.* Talcott, 19 Wall., 666.
Wright *v.* Nagle, 101 U. S. S. Ct. R., 858.

The language of the Supreme Court presently cited applies with all proper force to this.

"This Court construes all contracts brought before it for consideration, and in doing so, its action is independent of that of the State Courts,
383 which may have exercised their judgment upon the same subject." * * "Under the Statutes of Iowa in force when the contract was made, the relator is entitled to the remedy he asks, and this right can no more be taken away by subsequent judicialdecisions than by subsequent legislation. *
* "Any State law which substantially impairs them (the remedies for a contract) are within the protection of the Constitution of the United States, and any State law which substantially impairs them
384 is as much prohibited by that instrument as legislation which impairs otherwise the obligation of the contract."

Butz *v.* City of Muscatine, 8 Wall., p.583.

XII.—THEN IT IS SAID THAT THIS ACT (MARCH 2, 1872) IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA. 385

(*a.*) In regard to this matter it need only be said that in the case of Gary, which was before the Supreme Court of the State of South Carolina, although it was laboriously pressed upon the said Court, no assent to the proposition could be got from that Court. The Supreme Court of South Carolina in that case of Gary, placed its judgment altogether upon the ground *that the scrip as issued was a bill of credit, and therefore void by the Constitution of the United States*, and it will not be necessary to argue before this Court that there was a violation of the constitution of the State, when the Supreme Court of the State has not been willing to express an opinion upon that point. 386 387

In Railroad Co. *v.* Georgia, 98 U. S., p. 359, it is held that the judgment of the highest Court of a State, that a Statute has been enacted in accordance with the requirements of the State constitution is conclusive upon this Court and it will not be reviewed.

Conon *v.* Comptroller General, 6th Richardson, p. 390, holds that the act to provide for the settlement and redemption of certain claims against the State, 15 Stat., 997, neither violates Sec. 10, Art. 1 of the Constitution of the U. S., nor is it prohibited by the Constitution of the State as contemplating a mode of raising money outside of the powers conferred by that instrument for the purpose. 388

389 (*b.*) In the State *v.* Cardozo, Treasurer, 5 Richardson, S. C. Reps. (Sup.) 297, the Supreme Court of South Carolina seem to have overruled their decision in Gary *v.* Parker. In this last case they decide that certificates of indebtedness issued by the State Treasurer under the direction of an act of the Legislature in payment of certain claims against the State and redeemable by the Treasurer out of the taxes of a certain year or receivable in the payment of all taxes or other dues to the State are not bills of credit within the sense of that term as used in Article 1, Section 10, of the Constitution of the U. S. That Court, in that case, further decided that *it is no violation of Section* 10, *Article* 9, *of the Constitution of the State of South Carolina to issue certificates of indebtedness as evidence of debt due for the public printing and other claims against the State.*

(*c.*) The question of the constitutionality of the act under which the Revenue Bond Scrip was issued with relation to the Constitution of South Carolina was fully argued before the Supreme Court of the U. S., in the Williams case when on appeal before (98 U. S. p. 72) by Attorney General Youmans on one side, and Mr. McMahon on the other, that Court in their opinion did not notice the point, as in fact they ought not to have done—since the State officers who issued the scrip in question to Messrs. Wesley and Williams OUGHT TO BE ESTOPPED FROM SETTING UP SUCH AN INEQUITABLE DEFENCE. Persons who obtain money on the faith of securities which they represent at the time to be good should certainly be prevented from setting up the invalidity of such

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392 fact they ought not to have done—since the State officers who issued the scrip in question to Messrs. Wesley and Williams OUGHT TO BE ESTOPPED FROM SETTING UP SUCH AN INEQUITABLE DEFENCE. Persons who obtain money on the faith of securities which they represent at the time to be good should certainly be prevented from setting up the invalidity of such

securities without restoring the money so obtained. 393

(*d.*) That a registry of the bonds and scrip was not kept has been expressly held to be no valid objection.

Bond Debt Cases 12 So. Car., 203, wherein it is held.

"The Registration of Bonds required by the Constitution of South Carolina, Sec. 14, Art. 9, 394 to be kept by the State Treasurer, is not a condition precedent to their issue, but a direction of duty upon the State Treasurer."

(*e.*) *That the scrip is not a bond, and in other ways disregard, the provisions of the Constitution of South Carolina, we urge* that in the whole line of this argument the counsel for the appellants in the Court below astutely shifted their ground so as to make us look for authority under Sec. 14, Art. 9, of their State Constitution. 395 We prefer, however, placing our reliance upon Sec. 10—the State first incurred a *contingent liability* by its guaranty upon the *bonds;* then to take up these the State issues this scrip or certificate of indebtedness.

Section 10 of their State Constitution plays havoc with our antagonists position. It reads: 396

"No scrip, certificate or other evidence of State Indebtedness shall be issued except for redemption of stock, bonds or other evidences of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution."

397 **XIII.**—THE CERTIFICATES OF INDEBTEDNESS IN QUESTION WERE NOT BILLS OF CREDIT INHIBITED BY THE CONSTITUTION OF THE UNITED STATES TO BE ISSUED BY STATES.

This is substantially decided in 114 U.S., 270. Article I., Section 10, 1st paragraph in the Constitution of the United States.

398 *First.*—We assume the following propositions as not requiring argument or authority to sustain them:

1. The State may, by its Legislature, prescribe certain means or instruments by which taxes may be paid, such as bank notes, warrants on the treasury, school teachers' certificates, jury certificates, etc., etc.

2. The State, by its Legislature, may, at any time,
399 enlarge the number of these means or instruments.

3. The State may issue bonds, scrip, or any acknowledgment for its liabilities, provided they do not circulate as money.

Second.—The revenue bond scrip are not "bills of credit."

400 1. The history of the provision of the Constitution, contemporaneous construction and views of the best commentators, show that by "bills of credit" were meant:

A paper currency intended to circulate as money, not immediately redeemable, without adequate funds pledged to redeem, resting merely on the public faith.

And the mischief to be prevented was paper money issued by the State as above, which, by its constantly depreciating, would gradually inflict a heavy loss upon the people of the State and others who might hold the same. 401

Madison papers, 484–5.
Federalist, 355.
Story on Cons., Sec. 690–1, 2, 3.
1 Kent Com., 407 (408*).

2. The case that is supposed to be most adverse to the scrip is: 402

Craig *v.* The State of Missouri, 4 Peters, 410.

(*a*) In this case it is the definition (432) laid down, and not the decision, that is adverse. This definition has been overruled.

1 Kent Com., 407 note.
11 Peters, 313, 314, 317, 318, 323, 329, 331. 403

(*b* The decision is not adverse.

COMMENT.

The *definition* (and perhaps the *decision*) in Craig *v.* M. having been overruled and the case decided by four against three Judges, the case ought to be regarded as only deciding a case coming strictly and closely within the requirements of the law. 404

AGREEMENT.

Our case agrees with C. *v.* M. in:

1st. The scrip issued by authority and on the faith of the State.

405 2d. Receivable for taxes and dues.

3d. A portion to be retired every year.

DIFFERENCE.

1st. In C. *v.* M., loan office established (like temporary banks), to issue.

In ours, no such bank-like arrangement.

2d. In C. *v.* M., greater value given by their being
406 only $200,000.

In ours, $1,800,000.

3d. In C. *v.* M., receivable for *all* taxes, State, county and municipal.

In ours, certain State taxes excepted, and ☞*not* receivable for county or municipal taxes only, "all taxes levied by the State, and all dues to the State" (Sec. 4, 15 Stats. 81).

4th. In C. *v.* M., all public officers, and those
407 having claims against the State, compelled to receive the bills for salaries, fees, &c.

In ours, officers not even requested to receive the scrip for fees, and in other cases the receipt not compulsory (Sec. 5, page 81, says:) "The Treasurer be, and he is hereby authorized (*not required*) to pay out such R. B. S. in satisfaction of any claims against the Treasurer, except for interest that may accrue upon the public debt.

408 Sec. 5 may be dropped out as unconstitutional, yet the rest remain and be good.

5. In C. *v.* M., no special tax levied to redeem.

In ours, "an annual tax of 3 mills on the dollar. (Section 4).

6. In C. *v.* M. the issue was on no past indebtedness, and in no way differed from an original issue of

its bills by a bank and exactly like the issue of "bills of credit" by the State before the adoption of the Constitution of the United States. 409

In ours the issue of "certificates of indebtedness" in name and in fact, which indebtedness is expressly named in the Act and upon the Scrip: 1*st. By a reference to the Act and* 2*d by the printing on the back of the scrip* (Mem. "Act of March 2, 1872." There was no other Act passed on that date, nor between 28th February and 4th March).

410

7. In C. *v.* M., the bills were made a *legal tender* in the purchase of a commodity of so universal use as salt at a fixed price. In ours, can only be used in exchange for bonds.

8. In C. *v.* M., the bills were clearly intended and so admitted by the counsel for the State of Missouri, to serve the purpose of *money* and *to circulate* as such for all purposes in the community. The only thing lacking in the Act was to have made the bills a legal tender in the payment of debts due individuals and in the purchase of all commodities. In ours, no such intention manifested, but the contrary rather appears from the few uses to which the Scrip can be applied, as provided by the Act. 411

9. In C. *v.* M., the bills were issued at a time when there was only State bank currency and coin.

In ours the scrip is issued at a time when there is a general Federal currency (legal tenders and National Bank bills) that leaves no room for any such paper as the scrip to circulate as money. 412

Third.—The definition of a bill of credit that best accords with the history of the constitutional prohibition, the mischief to be prevented and the later decisions is that given by the Supreme Court of Georgia in The Central Bank *v.* Little, XI. Ga.,

413 351 : "Bills of credit, as contemplated by the Constitution, are such as are drawn or issued by the State upon the general credit thereof without the appropriation of any specific fund for the payment or ultimate redemption of such bills.

Fourth.—The decision last given and those of the Supreme Court of the United States clearly do not embrace the Revenue Bond Scrip.

Briscoe *v.* Bank, 11 Peters, 313, 314, 318.

414

This case limits bills of credit to those issued merely on the credit of the State, and those issued by the State, the circulation of which as *money* is enforced by statutory provisions.

Woodruff *v.* Trapnell, 10 How., 205, rules that to constitute a bill of credit it must be issued by a State on the faith of the State *and be designed to circulate as money, and it must be a paper which* 415 *circulates on the credit of the State and is so received and used in the ordinary business of life.*

The Act of 2d March, 1872, and the testimony clearly excludes the Revenue Bond Scrip from being bills of credit according to these two decisions which are later than that of Craig *v.* Missouri.

The doctrine of these two cases is reaffirmed in Darrington *v.* Bank of Alabama, 13 How., 16. In which case "the faith of the State is pledged for the redemption of the bills, and they are made re- 416 ceivable in payment for all public dues," p. 12.

From these cases it follows that the Revenue Bond Scrip, although the faith of the State is pledged for their redemption and they are made receivable in payment of certain public dues, yet not being intended to circulate as money and from their amount and nature and the present condition of the currency of the country it not being possible for them to so cir-

culate, and the State having set aside a particular 417
fund (the three mills tax) for their redemption, are not bills of credit.

Fifth.—The authorities before cited fully exclude the revenue bond scrip from being bills of credit, *because they are certificates of past indebtedness or liability.* The same result follows if they be regarded in the nature of a loan to liquidate the liability of the State upon the Blue Ridge Railroad bonds. 418

Story on Cons., sec. 693.
1 Kent Com., 408.
Craig *v.* Missouri, 4 Peters, 432.
Opinion of Johnson, *J.*, in same case, 443.
Opinion of Thompson, *J.*, in same case, 447.
Opinion of McLean, *J.*, in same case, 454.
Briscoe *v.* Bank, 11 Peters, 331.

The State being liable as guarantor upon four million dollars of bonds (as stated in Act of 2d 419
March, 1872), the credit of the State being thereby necessarily affected, and in the language of that Act as "the Treasurer may be required to meet at unforeseen and inopportune times, this large liability upon the part of the State," the Legislature has provided to extinguish this liability by an issue of eighteen hundred thousand dollars of certificates of indebtedness, by which means the bonds are cancelled and a loan is made by the State of the sum of eighteen hundred thousand dollars, to be liqui- 420
dated by the State by means of a special tax in the period of four years.

Now, to contend that it is not lawful for this to be done because the bonds were not due, is to say that the legislature of a State cannot do in behalf of the State what in the case of an individual would be a clearly beneficial and proper financial transac-

421 tion, why cannot a State meet or anticipate a liability at any time when it is to its advantage so to do? Who has ever questioned the right of this State to substitute new bonds in place of old bonds not yet due? If not, why could not the State anticipate a liability by actual payment of money, and still more clearly by issue of certificates of indebtedness, such as our scrip?

Sixth.—As to the money-like form of our scrip, we
422 would merely reply in the language of Johnson, *J.*, in Craig *v.* Missouri, "Suppose a State enacts a law authorizing her officers to borrow $100,000, and to give in lieu thereof certificates of a $100 each, expressing an acknowledgement of the debt, it is presumed there would be no objection to this. Then suppose that the next year she authorizes these certificates to be broken up into five and even one dollar bills, where can be the objection to this?

423 Further, as to the form of the scrip no one can dispute:

(*a.*) That the Treasurer of the State can only bind the State as authorized by Constitutional and Statute Law. When authorized by special Statute he can only bind the State to the extent and in the manner and form prescribed by Statute, and as a corollary.

424 (*b.*) The Revenue Bond Scrip, whatever may be its form, ornamentation and style, must be held by the Court to have such force and effect, and such only, as if the form were strictly in conformity with the Act. Now according to the Act (XV. Stats. 79), the effect and form should be as provided in Sec. 2 and 3.

SEC. 2. The Treasurer is to issue Treasury cer-

tificates of indebtedness (styled Revenue Bond Scrip). 425

SEC. 3. Printed or engraved in steel treasury certificates of indebtedness, to be known and designated as Revenue Bond Scrip of the State of South Carolina in such form and of such dimensions as may be determined by the State Treasurer and the President of the Blue Ridge Railroad Company, signed by the State Treasurer, and shall express that the sum mentioned is due by the State of South 426
Carolina to the bearer thereof, and that the same will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

A perusal of the Act of 2d March, 1872, in the light of the authorities I have cited, shows clearly that the emission of no bill of credit is contemplated or authorized.

1. The Act authorizes no promise to pay on the 427
part of the State.

2. It nowhere expresses or authorizes the implication that the scrip is intended for circulation.

3. It does in no way make its circulation compulsory.

4. It requires no one, private individual or officer, to receive the same in payment of debts or salaries or fees. 428

5. It nowhere gives it the character of money.

Has it the character of money? or, rather, of paper money?

What is paper money?

Says Pol. Economy, Book I., Chaps. XXI., XXII.: Paper money are printed obligations, the

429 ownership of which is transferred by delivery, which by their being convertible into specie at pleasure, or being by legislative compulsion able to discharge debts, have such a universal value in the community that they circulate and are used in the purchase of commodities, and in the liquidation of contracts.

Now, while this definition would apply to the certificates issued by the State of Missouri, to the United States legal tenders, National Bank bills,
430 and other issues of banks, it clearly excludes our Rev. B. S., if we consider either its form, legal effect, or its actual history.

The Act does provide: That the State having already incurred liability of four millions to the holders of the Blue Ridge Railroad Bonds, the Act provides for the holders of the bonds receiving in lieu of the same the Revenue Bond Scrip as certificates of the indebtedness or liability already incurred, which certificates are to be received in payment of
431 taxes and certain dues to the State by any one who may hold the same, and that every year one-fourth is to be retired and paid by means of a special tax, and that if over one-fourth be received in the State Treasury, the State Treasurer is authorized to pay out the overplus in satisfaction of claims against the Treasury.

Observe that while the act authorizes the State Treasurer to pay out the overplus of these scrip, it nowhere (as in the case of Craig *v.* The State of M.)
432 makes it compulsory upon any one "to receive" the same (9 Curtis, 122). The act nowhere makes the scrip money, or provides for its circulation as such.

Our Revenue Bond Scrip, then, are not bills of credit, because, negatively:

1st. They are not paper money.

2d. Because they were not intended to circulate as money. 433

3d. They are not a means whereby the State borrowed money or obtained a present credit.

4th. They have not and do not circulate as money.

Because, affirmatively:

They are no more and no less than certificates of past indebtedness—not so merely in name or form, but in fact, and have a fund provided for their redemption (the 3 mills tax). 434

XIV.—Even if the Revenue Bond Scrip is, because of the provision of the 5th section of the Act of March 2, 1872, liable to the imputation of being "bills of credit," yet as the original payees of that scrip are in no way connected with its subsequent reissue under section 5, *the provisions of said section may, so far as the holders of said scrip*, who have taken the same in exchange for the bonds, be rejected, as it in no way affects their title, nor is their title in any way dependent on it. 435

XV.—The provision for the reissue of said Revenue Bond Scrip, contained in Sec. 5 of the Act of March 2, 1872, taken in connection with the provision of Sec. 4 of the same Act, requiring the State Treasurer to retire at the end of each year one-fourth of the said Revenue Bond Scrip, evidently shows that the amount of said Revenue Bond Scrip, which might be reissued by the State Treasurer, has reference to the surplus of scrip on 436

437 hand after retiring the one-fourth thereof required to be retired by the Act; a provision with which the original payees or holders of the scrip, before it got into the Treasury, had nothing to do, and the said reissue could for that reason be rejected, and not in any way affect the original title of the payees or holders.

438 **XVI.**—*It was claimed on the hearing below that Edward B. Wesley was a necessary party to the assignee's suit.*

(a.) *This objection came too late to procure a dismissal of the bill in that suit.*

1. It was not set up in the answers in either case. When alluded to on the hearing the Circuit Court stated Mr. Wesley could be added as a
439 party if it were necessary. Mr. Wesley was then in open Court and had his scrip present and submitted his rights to the Court.

(Fol. 115. Transcript Record in assignee's case.)

But Mr. Wesley is a party to the litigation: he united with Williams in his suit (see decree appealed from, fol. 113, same Transcript of Record.)

440 Under these circumstances, both causes being heard together, and the proof showing no conflict between Mr. Wesley and the assignee and their respective rights, so that Mr. Wesley is represented by the assignees with his consent.

It seems to us the merest technicality to urge the objection.

2. The objection ought to have been taken by demurrer or plea. If not so taken, it will not be favored at the hearing unless the parties lacking are infants—or their rights necessarily concluded by a decree. 441

Neely *v.* Anderson, 2 Strob. Eq., 271.
1 Daniels' Chan. Plead. and Pract., sec. 287, note 1, 5th American Edit., Rules 52 and 53 of U. S. Courts in Equity cases have the same bearing. 442
See latter part of Sec. 74, Story's Eq. Pleadings, p. 78 (8th Am. Edition.)

3. This Court might (if it did not regard Mr. Wesley as virtually represented in this case) decide the issue, saving his interests.

Story *v.* Livingston, 13 Peters, 364.

"It is too late to take for the first time an objection of non-joinder of a party at the hearing if a decree can be made between the parties before the Court without affecting the interests of those not before the Court." 443

How much less can such objection be taken on appeal

XVII.—THE INTIMATION OF FRAUD INTIMATED IN THE ANSWERS AS HAVING BEEN COMMITTED IN PROCURING THE PASSAGE OF THE ACT OF 1872 IS A MATTER WITH WHICH THIS COURT HAS NO CONCERN. 444

Fletcher *v.* Peck, 6 Cranch, p. 87.
Observations of Marshal, C. J., p. 114.
Bennett *v.* Bogy, 1 Bald., 74.
Sharples *v.* the Mayor of Philadelphia.
Observations of Black, C. J.

445 But what had A. D. Williams or E. B. Wesley, the New York bankers who performed this great service for the State of South Carolina, or what had the assignees in bankruptcy to do with the alleged fraud committed by or on that Legislature? Such an intimation, so far as they are concerned, is without the slightest warrant.

Lastly, we claim a judgment in each of these cases in this Court, of affirmance.

446 DENNIS McMAHON,
THOMAS S. CAVENDER,
Solicitors for the assignees, Low & SOUTHERN.

THOMAS S. CAVENDER,
Solicitor for A. D. WILLIAMS.

DENNIS McMAHON,
JAMES H. RION and
THOMAS S. CAVENDER,
447 Of Counsel for Complainants in both suits.

448

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In the Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 108:

JOHNSON HAGOOD, Comptroller General of the State of South Carolina, R. S. PORCHER, County Treasurer of Oconee County, and SAMUEL E. MOORE, County Treasurer of Anderson County, APPELLANTS,

vs.

JOHN P. SOUTHERN and JAMES P. LOW, Assignees of the Blue Ridge Railroad Company in South Carolina, a Bankrupt, APPELLEES.

No. 109:

JOHNSON HAGOOD, Comptroller General of the State of South Carolina, S. L. LEAPHART, Treasurer of the State of South Carolina, P. C. GAILLARD, County Treasurer of Charleston County, W. H. GIBBES, County Treasurer of Richland County, H. F. ALEXANDER, County Treasurer of Oconee County, WILLIAM McGUKIN, County Treasurer of Anderson County, APPELLANTS,

vs.

AMOS D. WILLIAMS, APPELLEE.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

Argument of LeRoy F. Youmans, of Counsel for Appellants, In Reply.

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Argument of LeRoy F. Youmans, of Counsel for Appellants. In Reply.

Hagood *et al. v.* Southern *et al.* : Same *v.* Williams.

These cases are not within the jurisdiction of the Circuit Court.

The obligations of States are not subject to adjudication by judicial tribunals.

A State can enter into no *legal* contract, because there is no legal tribunal with authority to enforce it. It is one of the attributes, or incidents, of sovereignty, that a State cannot be made a party defendant in a suit at law.

The obligations of States are enforced by their own sense of honor, by the moral sentiments of the civilized world, and, in the last resort, by the arbitrament of the sword, by force of arms. There being no common arbiter, if a State wrongs another State, or the citizen of another State, and denies redress, war is the only alternative.

The several States constituting the United States of America have surrendered to the General Government certain attributes of sovereignty.

The constitutional compact known as the Constitution of the United States declares, defines and limits the powers and rights surrendered by the States. It is the *lex, et regula, et norma*, of the powers surrendered. The United States have no powers outside the grants of the Constitution;—the States have all powers not inhibited by the Constitution.

From Section 2 of Article III. of the Constitution, which declares that the judicial power of the United States shall extend to controversies between a State and citizens of another State, it might possibly—though scarcely possibly—have been argued that a State might be made a party *defendant* in an action brought by a citizen of another State.

But the doubt—if doubt there were—the shadow of doubt—was removed by the Eleventh Amendment, which declares that "the judicial power of the United States shall not be *construed* to extend to any suit in law or equity commenced, or prosecuted, against one of the United States by citizens of another State, or by citizens or subjects of any foreign State"—so careful were the people of the United States to guard the reserved rights of the States, and limit and confine the powers of the General Government to the legitimate objects of its creation.

But *these* suits are brought not against the State, but against the officers of the State, and the power of this Court is invoked to compel these officers to do what they are forbidden by the State to do, and for doing which they may be punished by the State. In other words, the attempt is made to do by indirection that which cannot be directly accomplished—to coerce the State through its officers; to subject it to the operation of a judgment in a suit to which it is not a party, and to which it cannot be made a party. Consent cannot give jurisdiction, and even if the State should voluntarily become a party, it would not be bound by the judgment of the Court. The provision of the Constitution is imperative: "The judicial power shall not be construed to extend," &c.

This Court will not lend itself to an attempt to evade the express provision of the Constitution, by rendering judgment against the State through its officers—thus by indirection assailing the sovereign prerogative of the State to be free from suit, and the express provision of the Constitution recognizing and asserting that prerogative of sovereignty. These views are fully sustained, and with much greater power expressed, in the opinion of this Court in the cases of *Louisiana* v. *Jumel* and *Elliot* v. *Wiltz*, (107 U. S., 711,) recited in the opening argument for appellants in these cases, and to which, therefore, it is only necessary, now, to refer. (Brief of Counsel for Appellants, pp. 7 and 8.) But for the case of *Poindexter* v. *Greenhow*, (114 U. S., p. 270,) it might have been argued with great—(I will not, since that case, say with irresistible and demonstrative)—force, that in no case could a judgment be rendered by a Court of the United States against a State, or against an officer of a State, acting under, and in obedience to, an authoritative mandate of a State, whether such mandate be right or wrong, constitutional or unconstitutional, compelling such State or officer to do, or to refrain from doing, any act forbidden, or directed, by the legislation of the State, in which is involved the supposed obligation of the State to an individual.

The 10th Section of Article I. of the Constitution, in de-

claring that "no State shall pass any law impairing the obligation of contracts," had—I with deference submit—no reference to obligations of the States themselves, which are not enforceable by judicial process. The State can only declare by Statute what are, and what are not, its obligations. Its officers are bound to obey its directions, and it is only when its Acts violate or impair the obligations of contracts between *man and man*, that the Courts can intervene to enforce the constitutional, and to annul the unconstitutional, provisions of law. The State makes its bond *by Statute*. Can it be compelled *by law* to pay it? Certainly not. It enacts a Statute directing its officer to pay, but before he pays it repeals that Statute, and directs him not to pay it. In what worse position is the creditor after the repeal, than before the passage, of the Statute? And why should the Courts have more power to enforce one of these Statutes than another? The State cannot be sued in the one case more than in the other, and the officer of the State is as much bound to obey the one Act as the other. It is not for him (the officer) to question the constitutionality or unconstitutionality of the Act. His duty is obedience; and a judgment against him is a judgment against the State, and thus, after all, the State is made a party defendant by indirection, or, rather, is subjected to the operation of a judgment against its officer to which it is itself no party. The difference between the two cases would seem to be this, and only this, that in the case of *Louisiana* v. *Jumel* the alleged repudiation of the legislative obligation was by constitutional provision; and in the case of *Poindexter* v. *Greenhow*, by legislative enactment. This, it would seem, would make no difference, inasmuch as the inhibition of the Constitution applies as well to the organic law as to the legislation of a State. Neither by the one, nor by the other, can a State impair the obligation of a contract. What, by constitutional intendment, is a law impairing the obligation of a contract, I have above endeavored, with great deference, to intimate. This Court has, wisely no doubt, distinguished the case of *Poindexter* v. *Greenhow* from that of *Louisiana* v. *Jumel*. But I feel assured that the Court will confine the operation of

the decision in the latter case to cases strictly similar and analogous to that case—especially when it is considered that the Court was so nearly equally divided in opinion. I think it will clearly appear that the reasoning and ruling in the case of *Louisiana* v. *Jumel* are those which apply to the cases at bar, and that the case of *Poindexter* v. *Greenhow* is wholly irrelevant and inapplicable to the present issues.

The Constitution of the United States is, unquestionably, the supreme law of the land, and when it speaks, State laws and State Constitutions must hear and obey. But let it be heard and obeyed as well when it disclaims, as when it asserts, authority. It never intended to assume the power to compel States to perform their contracts, and as soon as it was so interpreted, it was amended and the power disclaimed. On this point, as well as others involved in the issues presented in the cases at bar, I beg leave respectfully to refer to the able dissenting opinion in the Virginia Coupon cases, 114 U. S., 330, *et seq.*

If there is conflict between the Constitution as originally adopted and the amendment, it seems clear that the amendment must prevail.

The prayers of the bills in these two cases (see Record, pages 8 and 9, fo. 13, of the Assignees' case, and pages 11, 12 and 13, folios 17 and 18, of the Williams Bill,) demand in terms that which was demanded in the case of *Louisiana* v. *Jumel*. They demand that the State, through her officers, should be compelled by the decree of this Court to perform her alleged contract, and this demand is made by persons who are not tax payers. The Railroad has long since passed from the hands of these assignees, and though they once may have been tax payers, and may have presented scrip in payment of taxes, there is no evidence that they ever paid such taxes in any other way; and it is certain that those taxes were not then, have never since been, and are not now, a lien on any property of these assignees. As to Amos Williams, he is not, and has never pretended that he was, a tax payer in South Carolina. He did present at one time certain supposed claims against the State to certain officers of the State, and demanded payment, and he now asks this

Court to take the State of South Carolina by the throat, and, in defiance of the Constitution, say, "pay that thou owest." The utmost extent to which the Virginia Coupon cases have gone, is to exercise preventive, not active or compulsory, jurisdiction—to
17 prevent, not to compel, action by State officers.

Besides, these cases differ from the Louisiana and Virginia cases in this, that in those cases the attempt was to enforce the performance of valid obligations of the State;—in these cases the attempt is to enforce the performance of alleged obligations which we shall show are unconstitutional, fraudulent and void.

Admitting, for the sake of argument, that the Circuit Court has jurisdiction to coerce a State, and compel it, by judicial process, to perform its contracts, or, rather, promises—we
18 shall now proceed to show that the whole series of Acts under which these parties claim are unconstitutional and void.

1. The Act of 1868 is in direct conflict with the provisions of the South Carolina Constitution of 1868. (See Art. IX., Secs. 7, 10 and 14.) Section 7 authorizes the contracting of debts for defraying extraordinary expenditures, and prescribes the mode of contracting such debts. Section 10 provides that "no scrip, certificate, or other evidence of State indebtedness, shall be issued, except for the redemption of stock, bonds, or other evidences of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution." Now, the "stock,
19 bonds, or other evidences of indebtedness previously issued," evidently mean stock, bonds or other evidences of indebtedness issued before the adoption of the Constitution of 1868, or they mean nothing, for after the adoption of the Constitution, which provides specifically for the debts to be contracted, and the mode of contracting them, no stock, bonds, or other evidences of indebtedness could be issued for debts contracted after the adoption of the Constitution, except for such debts as were contracted in accordance with its provisions—that is, such debts "as are expressly authorized in this Constitution." Section 14 pro-
20 vides and prescribes the mode and form of debts contracted by the State, and excludes any other mode of contracting debts.

Now, let us read the Act of 1868, passed immediately after the adoption of the Constitution of 1868, in the light of the Constitution of 1868. (See the Act, at pp. 49, 50 and 51, folios 70, 71 and 72 of the Record in the Assignees' case.) This Act refers to certain Acts of the General Assembly of the State of South Carolina, ratified in the year 1854, which Acts had become inoperative and void by the adoption of the Constitution of 1868, inasmuch as the acts necessary to be done in order to create a liability on the part of the State had not been done, and, therefore, no debt on the part of the State had been created, for the redemption of which "scrip, certificates, or other evidence of State indebtedness" are authorized to be issued by the 10th Section of the 2d Article of the Constitution of 1868.

The Act of 1868, then, must stand, or fall, according to its conformity with the prescriptions of the Constitution of 1868. To the requirements of this Constitution, it conforms in no single particular.

In the first place, it attempted to create an indebtedness, not to defray the extraordinary expenses of the State, but to make the State a surety on the bonds of a corporation—a purpose nowhere contemplated, or provided for, in the Constitution of 1868.

In the second place, it attempted to create a liability, which, if not a debt, was expected to mature into a debt, and is, as a debt, subject to the provisions of the Constitution; otherwise, the requirements of the Constitution might be evaded by a resort to subtle and sophistical contrivances. This Act was an attempt to create a debt not authorized by the Constitution, and in a manner different from that prescribed by the Constitution of 1868, and is, therefore, null and void.

The Act of 1868, being unconstitutional and void, created no debt or liability on the part of the State, and with it, fall the Acts of 1871 and 1872, (Record in Assignees' case, p. 51, fol. 72, *et seq.*,) in so far as they purport to be amendments of the Act of 1868, or provide for its enforcement. But, admitting the validity of the Act of 1868, the provisions of the Act of 1871 are inoperative and void, because it is an Act to promote the

consolidation of two railroad companies, which never have been consolidated. The purpose for which the Act was passed having never been fulfilled, the Act itself becomes inoperative and void, as, indeed, appears to have been the intention of the Legislature, as appears by the 10th and last Section of the Act. (See Record in Assignees' case, p. 53, fol. 75.)

In any event, the 6th Section of the Act is unconstitutional and void, as in conflict with Section 20 of Article II. of the Constitution of South Carolina of 1868:

"Every Act or Resolution having the force of law shall relate to but one subject, and that shall be expressed in the title."

There appears no possible connection between the consolidation of two railroad companies and the repeal of the clause in Section 2 of the Act of 1868, which prescribes the terms on which aid should be granted to the Blue Ridge Railroad Company.

The Act of 1872 (Record of Assignees' case, p. 53, fo. 75, *et seq.*,) can in no case have any force or effect—

1. Because it was passed under a misapprehension, the Legislature supposing the State to be liable for the bonds to be retired by it, when, in fact, the State was not so liable—the bonds having never been negotiated upon the terms prescribed by the Act of 1868, every clause of which was in force, if *one* was in force; and so there was no authority for the emission of the bonds, nor were they emitted, but hypothecated without authority, and purchased without authority, and for almost nothing, from those to whom they were pledged—of all which the pledgees, and the purchasers from them, were bound to take notice.

The whole matter was contained in public Acts, of which they had notice, as well as of the Constitution, in violation of which these Acts were passed.

The Act of 1872, in so far as it proposed to redeem the bonds, was *nudum pactum*, and the bonds being worthless, the Revenue Bond Scrip given in exchange for them are equally worthless, and the State is in no sense liable for their redemption. The admission of the State's liability by the Act of

March, 1872, does not make the State liable if, in fact, it was not liable, and the Legislature was mistaken in supposing it to be liable.

The Legislature had no authority to confer a gratuity upon railroads, or Mr. Wesley, or Mr. Williams, or any one else, and their calling it a liability, or debt, could not convert it into a debt.

The condition imposed by the Act of 1868 evidently implied, if it did not in terms express, that the bonds should not be sold for less than par. (See last clause of Sec. 2 of Act, Assignees' Record, p. 50, fo. 72.) This provision has never been repealed, because the Act repealing it is void; and it has never been complied with, nor is it pretended that it has ever been complied with.

Those who dealt with these bonds were bound to take cognizance of the Constitution of 1868, of the Act of 1868 under which the bonds were prepared, and of all Acts and parts of Acts relating to them, and of the constitutionality of such Acts.

If the bonds were void in the hands of the officers of the State and of the railroad, their passing into the hands of others cannot give them validity. Those who took them must take the consequence of their incaution, or of their complicity in the fraud of those who parted with them; and they cannot now come and ask the State to repair the wrong they have done to themselves, either by carelessness, or worse.

It is said that the State has no right to complain if the bonds were hypothecated, because she would only be liable for the amount raised on them. But surely she has a right to complain that she should be called upon to make good the pledge when she is not liable at all, and, further, to pay the full value of bonds which were only hypothecated to lay the foundation for a fraudulent sale.

To see what was the character of the transactions and dealings with these bonds and this Revenue Bond Scrip, it is only necessary to look over the evidence; and, as a sample, I ask leave to quote a passage from the evidence taken in the case:

"The Hon. J. J. Patterson, President of the Blue Ridge Rail-

road Company, says: 'The first scrip exchanged for bonds was with the banks in Columbia. I do not remember the amount now, but I made a return to the Court in Columbia, in the case of *McKay et al.* I also got bonds from A. D. Williams & Co., of New York, to the amount of $2,625,000, hypothecated for a loan of $300,000. I borrowed this money from Mr. Wesley, in New York, to take up this loan, and gave him $975,000 of the scrip to secure him. I also gave Mr. Wesley $30,000 more of the scrip to secure a loan of $18,000, which I used to buy bonds of the State of Tennessee to purchase the interest of the said State in the Blue Ridge Railroad Company in Tennessee. I am not positive about the figures. I also got **$417,000** of the bonds from A. D. Williams, of New York, which he held as a purchaser at a public sale from Mr. Iseman, who had made a loan to the Company of **$25,000,** and held these bonds to secure the same. I hunted all the bonds of the Company up, and all of them were in the hands of creditors, except three or four. $600,000 were in the hands of the Financial Agent of the State in New York. * * * There was at least $20,000 of work done on the road while I was President. * * *. When I say the bonds were held by creditors, I mean that they were held by persons who made loans to the Company, and held these bonds as collateral, or who held them for debts due from the Company. By the issue of this scrip all the bonds guaranteed by the Company were retired and cancelled except the $600,000 in the hands of the Financial Agent, and the three or four as above mentioned.'"

(Brief of Pleadings, Evidence and Proceedings in the two cases, pp. 142 and 3, folios 103 and 4.)

This statement will afford the Court an imperfect view of the manner in which these securities were treated by those who administered them.

Admitting, for the sake of argument, that the railroad bonds were valid obligations of the State, and that the Legislature could issue certificates of indebtedness for their redemption—it was incumbent upon the Legislature to issue such paper as should not be in conflict with that provision of the Constitution

of the United States which forbids the States to issue bills of credit.

The question as to whether this scrip did come within the definition of bills of credit, has been so fully argued, and the affirmitive proposition so conclusively established, not only in the cases of *The State of South Carolina ex relatione E. F. Gary v. Niles G. Parker, State Treasurer*, and *DuPre v. County Treasurer*, 4 S. C., 229, and note *a*, but in the argument of the Attorney General of South Carolina, who opened the discussion on the part of the appellants, (see Brief of Counsel for Appellants, pp. 13, 14, 15 and 16,) that it is scarcely necessary that I should add one word on the subject. I shall, therefore, confine myself to some brief remarks on the positions taken by the counsel for the appellees. (See their Brief, p. 107, *et seq.*)

1. The Act implies, if it does not express, a promise to pay, inasmuch as it pledges the faith and funds of the State for its *ultimate* redemption—not in the course of four years, but indefinitely, ultimately. (Section 4 of Act, Assignees' Record, p. 56, fol. 77.) A fund is provided for the redemption of the scrip—the three mill tax.

2. It does distinctly express and authorize the implication that the scrip is intended for circulation, inasmuch as the State Treasurer is authorized to pay out all that may be received into the Treasury—not the surplus over one-fourth in any year, but *all*, and for an indefinite period of time. (See Section 5 of Act, Assignees' Record, p. 55, fo. 78.)

3. It is not necessary that its circulation should be made compulsory. It is but recently that the circulation of any currency has been made compulsory. The circulation of currency is not generally compulsory. The United States legal tender notes are the only compulsory circulation in the country, and they are so by recent adjudication and by the judgment of a divided Court.

4. It is not necessary that any one should be *required* to receive this scrip. It is sufficient that he is authorized to receive it, that it is presented and offered as currency in payment

of debts, as directed by Section 5 of the Act. (Same Record, p. 55, fo. 78.)

5. It has the character of money. It is in the form of money. It is directed by the Act to be received *as money, and to be paid out as money, and that indefinitely as to time and quantity.*

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6. The definition of paper money given by appellees' counsel at fos. 428-9 of this Brief is inaccurate in this, that it need not discharge debts by legislative compulsion. This scrip was manifestly *intended* to circulate and be used in the purchase of commodities and the liquidation of contracts, and it is the *intention* which gives it character. It is the tendency of all paper currency to depreciate and become valueless, and hence the inhibition of the Constitution. Neither the definition in the case of *Craig* v. *Missouri*, nor the decision, has been overruled.

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See *Poindexter* v. *Greenhow*, 114 U. S., pp. 283–4, for the form of the Virginia Coupons and for the definition of a bill of credit, as indicated in the several cases there referred to, resulting in this: "It must be a paper issued by the sovereign power, containing a pledge of its faith, and *designed* to circulate as money." And again: "It must be issued by the State, on the faith of the State, and be designed to circulate as money."

All these characteristics mark this scrip as bills of credit. To make this manifest, compare the Virginia Coupon above referred to, with the South Carolina Scrip. See form at p. 13

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of Brief of Counsel for Appellants, thus:

"No. 90.

"REVENUE BOND SCRIP.

"THE STATE OF [Palmetto Tree] SOUTH CAROLINA,

"COLUMBIA, S. C., March, 1872.

"Receivable as one hundred dollars in payment of all taxes and dues to the State, except special tax levied to pay interest on public debt.

"NILES G. PARKER,

44

"State Treasurer.

"One hundred dollars. One hundred dollars."

On each side of the scrip:

"One hundred dollars, Act March, 1872."

The scrip is for amounts from one dollar to five thousand dollars. For the ultimate redemption of this scrip, the faith and funds of the State are pledged, and it is directed to be received into the Treasury in payment of taxes, and to be paid out as received, indefinitely, in discharge of the obligations of the State.

Unlike the Virginia Coupon, it does not say "receivable *at and after maturity*," or "*interest due* 1st January, 1884, on Bond No. 2,731," or "Coupon No. 20."

It is detached from no bond. It has no date of maturity. It is receivable and payable now, at once, and forever—that is, it is intended for general, for universal, circulation, without limit as to time.

It is said that Section 5 may be struck from the whole, and leave the rest a constitutional enactment. Not so. Section 5 is an important part of the scheme of the Act, without which the Act might not have been passed. See on this head *Poindexter* v. *Greenhow*, 124 U. S. Rep., pp. 304 and 5, beginning with the words, "It is undoubtedly true," &c.

De Roy Thomas
of Counsel for
Appellants

C. S. Hamilton & Co., Printers, 12 Barclay St, N. Y.

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17-52

Supreme Court of the United States.

JOHNSON HAGOOD, Comptroller General of the State of South Carolina, R. I. Porcher, County Treasurer of Oconee County, and Samuel E. Moore, County Treasurer of Anderson County, *Appellants,* *vs.* JOHN P. SOUTHERN and JAMES P. LOW, Assignees of the Blue Ridge Railway Co., in South Carolina, *Appellees.*	No. 108.
JOHNSON HAGOOD, Comptroller General of the State of South Carolina, S. L. Leaphart, Treasurer of the State of South Carolina, P. C. Gaillard, County Treasurer of Charleston County, W. H. Gibbs, County Treasurer of Richland County, H. F. Alexander, County Treasurer of Oconee County.	No. 109.

Supplemental Points of Appellees.

1.—*To the first point of appellees' brief add the following, viz.:*

(*k*). The learned counsel for the appellants in his brief, and his learned associate in his brief in reply, confidently relies upon the position that the State of South Carolina is, in essence and effect, the real party in interest, and that the said State cannot be made a party because of 11th Amendment of the Constitution. We respectfully submit in answer to that position, that *so far as the assignees' suit is concerned*, the 11th Amendment does not apply to their case.

1. The language of the 11th Amendment of the Constitution is—

> "That the Judicial power of the United "States shall not be construed to extend to any "suit in law or in equity commenced or prose- "cuted against one of the United States by "*citizens of another State*, or by *citizens or* "*subjects of a foreign State*."

2. The Blue Ridge Railroad Co. was a citizen or *person* resident in South Carolina—a corporation created by that State.

> See Rev. Stat. U. S., Sec. 1, defining what is included under the term "*person*."
>
> Louisville, Cin. and Charleston R. R. Co. *vs.* Letson, 2 How., 497.
>
> Marshall *vs.* B. and O. R. R. Co., 16 How., 314.
>
> Covington D. and B. Co. *vs.* Shepherd, 20 How., 227.
>
> O. and W. R. R. Co. *vs.* Wheeler, 1 Blach., 286; 7 Wall, 118.
>
> Steamship Co. *vs.* Tugman, 106 U. S., 120; 2 Abb. U. S., 323.

3. Their assignees in bankruptcy were officers created by the District Court of South Carolina and were moreover residents of that State.

> See record in Assignee's case, vols. 38, 51, 55 and 81.

4. The inhibitory language of the 11th amendment does not therefore apply to the assignee's case.

5. By the Constitution, Art. 3, sec. 2: "The judicial power shall extend to all cases in law and "equity, *arising under this Constitution, the "laws of the United States*". * * * In those cases in which the State shall be a party, the Supreme Court shall have original jurisdiction. *In all other cases* before mentioned the Supreme Court shall have *appellate* jurisdiction both as to *law and fact*, with such exceptions and under such regulations as the Congress shall make.

6. The Civil Right Act, 18 Stat., p. 336, gives jurisdiction to the Circuit Courts of the United States of questions arising under Art. 14, sec. 1, of the amendments, and an appellate jurisdiction in this Court from their judgments in such cases without regard to amounts involved (sec. 5 of same act).

7. The Act of 1875, 18 Stat., p. 470, sec. 1, extends the jurisdiction of the Circuit Courts of the United States to all cases in law and equity involving $500, and involving construction of the Constitution or laws of the United States; and an appeal to this Court from final judgment in cases involving over $5,000 in amount, is given by 691, 692 R. S., 4th Sub. 18th Stat., 316, sec. 3.

(*l.*) The case at bar, presented by the assignees of the Bankrupt Blue Ridge Railroad Company against sundry officers of the State, is a case in equity arising *under the constitution:* also *under the laws of the United States*

1. The Judiciary Act vests in the Courts of the United States exclusive jurisdiction in all cases in bankruptcy. Act of 24th Sept'r, 1789, Rev. Stat. sec. 711. The Rev. Statutes of the United States, sec. 4972 vests in the District Courts jurisdiction.

2. To the collection of all the assets of the bankrupt.

3. To the ascertainment and liquidation of the liens and specific claims thereon.

4. To the adjustment of the various priorities and conflicting interests of all parties.

5. To the marshalling and disposition of the different funds and assets, so as to secure the rights of all parties, and due distribution of the assets among all the creditors.

6. To all acts, matters and things, to be done under and by virtue of the bankruptcy, until the trial, distribution and settlement of the bankrupt's estate.

By sec. 4979, it gives concurrent jurisdiction to the Circuit Courts, in cases at law or in equity, against any person claiming an adverse interest * * * touching any property or rights of the bankrupt transferable to or vested in such assignees. See sec. 630, R. S.

Sec. 4989.

(2). The case of the assignees at bar is a case arising under the Constitution in several aspects, viz:

1. The determination whether the Act of 1872 is a contract made by the State of South Carolina, with the holders of the revenue bond

scrip, wherein the State agrees that its officers charged with the levying and collection of its taxes shall accept such scrip in payment of all taxes levied by the State, except the special tax to pay the interest on the public debt.

2. To determine whether that contract has been violated by the officers of the State, or by the Legislature thereof, thus presenting a case under Sec. 10 of Art. 1 of the Constitution.

3 To determine whether the S. C. R. B. scrip in question is a violation of the same, Sec. 10 of Art. 1 as a bill of credit.

4 Whether the State's action is in violation of Sec. 1 of Article XIV, of the Amendments.

(4). The case of the assignees at bar is also a case arising under the Laws of the United States in this respect, viz.:

Under the Bankrupt Act, touching the matters provided for in Sections 4972 and 4979 of Rev. Stat.

(*m*). The appellate power of the Supreme Court from final judgments of the Circuit Court is, therefore, complete and ample from

1. All judgments of the Circuit Court, in cases of bankruptcy, where the amounts are over $5,000 in amount, touching the estate of the Blue Ridge Railroad Co., bankrupts, including the scrip they owned, and the equity in this scrip that was pledged to Wesley.

2. All final judgments of the said Courts exceeding $5,000 in amount, in cases involving

a construction of the Constitution or Laws of the United States.

3. All final judgments of the Circuit Courts, in cases arising under the Civil Rights Act (and by parity of reasoning under Sec. 1 of Art. 14 of the Amendments), without regard to amounts involved.

See following acts:

Rev. Stats., 691, 692.
18 Statutes, 316, Sec. 3.
" " 470, " 1.

4. Then what construction has the Supreme Court given to its appellate power in cases arising under the Constitution or Laws of the United States, where a State is a party at the suit of its citizens.

(*n*). The case of Cohens *vs.* the State of Virginia, 6 Wheat., 264, is a complete exposition by Chief Justice Marshall of the appellate power in a case arising *under the Constitution or laws of the United States.* He uses the following language, among other things, viz., p. 378:

1. The first question to be considered is whether the jurisdiction of this Court is excluded by the character of the parties, one of them being a state and the other a citizen of that state. The 2d Section of the 3d Article of the Constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the Courts of the Union in two classes of cases. In the first their jurisdiction depends on the *character of the cause whoever may be the parties.* This class comprehends all cases in law and equity *arising under this Constitution, the laws of the United States* and treaties made or which shall be made under their auction. *This clause extends the jurisdiction of the*

Court to all the cases described, without making in its terms any exception whatever, and without any regard to the condition of the party.

If there be any exception it is to be implied against the express words of the article.

In the second class the jurisdiction depends entirely *on the character of the parties.* In this are comprehended "controversies between two or more states, between a state and citizens of another state, and between a state and foreign states, citizens or subjects."

If these be the parties it is entirely unimportant what may be the subject of controversy.

Be it what it may, these parties have a constitutional right to come into the Courts of the Union. After discussing the objections raised to the definition of cases arising under the Constitution and laws of the United States, he continues:

"*A case in law or equity consists of the right of one party as well as of the other, and may be truly said to arise under the Constitution or a law of the United States, whenever its correct decision depends on the construction of either. Congress seems to have intended to give its own construction on the 25th Section of the Judiciary Act, and we perceive no reason to depart from that construction.*"

He then discusses and admits the general proposition that a state is not sueable without its own consent, but goes on and demonstrates that by assenting to the Constitution the different states have assented to being summoned into the Federal Courts, and says:

"*We think a case arising under the constitution or laws of the United States is cognizable in the Courts of the Union, whoever may be the parties to that case*" (p. 383).

One of the express objects, then, for which the judicial department was established is the decision of controversies between States and between a State and individuals. The mere

circumstance that a State is a party gives jurisdiction to the Court. How, then, can it be contended that the very same section should be so construed as that this same circumstance should withdraw a case from the jurisdiction of the Court, where the Constitution or laws of the United States are supposed to have been violated.

The constitution gives to every person having a claim upon a State a right to submit his case to the Court of the nation.

However unimportant his claim might be—however little the community might be interested in its decision—the framers of our constitution thought it necessary, for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided. Can it be imagined that the same persons considered a case involving the constitution of our country and the majesty of the laws, questions in which every American citizen must be deeply interested, "*as withdrawn from this tribunal, because a State is a party.*"

After discussing the effect of State opposition to the execution of the laws of the United States, he continues and says, on p. 393:

"After bestowing on this subject the most attentive consideration, the Court can perceive no reason, founded on the character of the parties, for introducing an exception which the Constitution has not made, and we think that the judicial power, as originally given, *extends to all cases arising under the Constitution or laws of the United States, whoever may be the parties.*"

He then discusses the further objection, founded on the Second Section, to wit:

In those cases in which a State shall be a party, the Supreme Court shall have original jurisdiction, and in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction. After discussing this at length, he arrives at the conclu-

sion—"When, then, the Constitution declares the jurisdiction in cases where a State shall be a party *to be original*, and in all cases arising under the Constitution or a law to be appellate, the conclusion seems irresistible that its framers designed to *include in the first class those cases in which jurisdiction is given because a State is a party, and to include in the second those in which the jurisdiction is given, because the case arises under the Constitution or a law.*"

He subsequently refers to the 11th Amendment the causes that led to its adoption on p. 404.

The jurisdition of the Court in such case was deliberately examined and reaffirmed in Worcester *vs.* State of Georgia, 6th Peters, p. 515, opn. 562. See observe of McLean, Justice, pp. 570, 572, 573, and Cohen *vs.* Virginia, approved of.

The Cohen case is cited in 12 Peters, p. 657, opn. 722, 727; is cited in 16 Peters, p. 64 opn.

(*o*). Such is the construction of the appellate power of this Court given to that class of cases legislated upon in Sec. 2, Art. 3 of the Constitution, viz.:

"*Cases in law and equity arising under the Constitution, the Laws of the United States.*"

And that such jurisdiction, when exercised by the Supreme Court, is appellate, without regard to a State being a party or not.

(*p*). It may be said: Why is it important to make the above statements in the assignee's case, when under these views it is conceded that the State of South Carolina could not be made, under 18 Stat., 470 Sec. 1, a party *in the Circuit Court*, at the suit of its citizens.

We answer that their importance arises in this view, that in the cases cited against them in the brief of the appellants, it is argued that their suit, though in form against the State officers, in

essence is against the State. That the inability to make the State a party is based solely on the 11th Amendment.

It is an objection claimed to be founded on organic law, and, therefore, fatal to their case; whereas, in truth and in fact, its true ground should be based, in the assignee's case, *on the failure of Congress, up to* 1875, *to invest the Circuit Courts, at that time*, with the judicial jurisdiction conferred by the Constitution to the extent conferred in that instrument, and if it be true that under the Act of 1875, Chap. 137, 18 Stat. 470, Sec. 1, the jurisdiction of the Circuit Courts has been enlarged and extended to "*all suits of a civil nature at common law or in equity where the matter in dispute exceeds, exclusive of costs, the sum of or value of five hundred dollars, and arising under the Constitution or Laws of the United States,*" *without regard to the parties*, or in any amount in civil right cases.

It will follow, under the reasoning of Cohen *vs.* The State of Virgina, 6 Wheaton, p. 264, that such a jurisdiction exists in the Circuit Court below, in that class of cases, and that this Court have appellate power in such cases, whether the State be a party or not.

The only objection that can be made to the relief in the assignee's case is whether to grant it touches on purely political questions, which this Court refuses to entertain.

If it be true that such appellate jurisdiction exists in this Court in that class of cases without regard to parties, under the reasoning of Cohens *vs.* Virginia, then, under the language of the 11th Amendment, such objection cannot be urged against us in this Court.

Judge Harlan, in his dissenting opinion in Jumel *vs.* Louisiana, 107 U. S., p. , discusses to some extent the effect of the Act of 1875.

II.—To the second point of the appellee's brief add the following, viz.:

(*a*). In Marye *vs.* Parsons, 114 U. S., p. 325, the following questions do not appear from the report of the case to have been argued or decided, viz.:

1. The effect of the decision of the Court in making a distinction as to the relief to be given to persons who are tax-payers and those who are not tax-payers—a distinction manifestly against the provisions of Sec. 2, Art. 4, of the Constitution and the Civil Rights Bill enacted under the Amendments, Art. 14, Sec. 1.

2. The effect of the legislation of Virginia on citizens of other States, under the 1st Section of Article XIV., in confiscating, as it were, Mr. Parson's property in his coupons: If a tax-payer, residing in Virginia, and paying personal taxes there, or any person owning real estate subject to taxation in Virginia, and owning coupons of the kind tendered, can tender them and avail himself of them, in payment of taxes of Virginia, under the cases of Poindexter *vs.* Greenhow, 114 U. S., 270, and of Allen *vs.* Baltimore and Ohio R. R. Co., 114 U. S., p. 311, because of their being tax-payers or liable to taxation, yet that Mr. Parsons, a banker in New York, owning large amounts of those coupons, purchased in the financial centre of the United States, cannot have the same relief because he owns no ~~tangible~~ taxable property therein, seems to fly counter to the provisions of Sec. 2 of Art. 4 of the original Constitution, which provides that

The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

It seems also to be counter to Sec. 1 of Art. 14 of

the Amendments above quoted. The true grounds of the decisions in Marye *vs.* Parsons, 114 U. S., p. 325, and of Williams *vs.* Hagood, 98 U. S., pp. 72–5, we respectfully submit should be based on the position that neither Williams nor Parsons had put themselves, by previous demands or tenders, to call on this Court at the time of their respective decisions for a judicial determination of their respective rights.

The decisions then would be impregnable. We respectfully submit that they never should be construed as establishing a distinction between different classes of citizens, viz.: those owing taxes and those who happen not to be liable to taxation.

(*b*). This decision of Marye *vs.* Parsons, 114 U. S., p. 325, should not be held under the circumstances of Mr. Wesley or Mr. Williams' cases, to go beyond the result named in the last point.

The South Carolina legislation presents a much more flagrant case than that of Virginia expounded in the case of Marye *vs.* Parsons.

South Carolina, in their act of March 4, 1872, recited the fact which was true, that the Blue Ridge Railroad bonds, on which they had endorsed their guaranty, were pledged in the City of New York or elsewhere.

They were legislating to make a contract with that set of capitalists *out of their State* who held them as security. Creditors who were necessarily not subject to their taxation. They offered them forty-five cents on the dollar to retire their guaranty. To gild the offer, they gave to the scrip special privlieges of receipt for taxes—of redemption one-quarter in each year. Security by a special tax which they levied in the act. This made a marketable commodity of the scrip, available in the financial centre of the Union for sale like any other security having special privileges. IT WAS PROPERTY—of the kind that brokers and bankers deal in—as much property in its way, though not so

available, as gold and silver for their use or really or personally subject to taxation.

Without leaving their desks in Wall street in New York City, both Messrs. Williams and Wesley could dispose of it in parcels to taxpayers, or each of them might lock it up in his safe with the certainty of collecting one-quarter of it each year, until paid from the State Treasurer of South Carolina as provided in the act creating the contract.

If the State of South Carolina, after making such a contract, and thereby getting their guaranty back and cancelling same, can deliberately repeal the fourth section of their contract, *the one that gave a marketable value to non-resident holders of that scrip*, and enact the subsequent legislation herein complained of, do they not deprive these gentlemen and other like holders of this S. C. revenue bond scrip of their property in it *without due process of law?*

Do they not make and enforce a law which abridges the privileges and immunities of citizens? Clear violations of Sect. 1 of Article XIV. of the Amendments? A clear violation of the civil rights bill of 1875. Do they not deliberately violate Sec. 10 of Art. 1 of the original constitution?

Of course, legislators who do these things, have to put on some pretext.

The pretense is, that being *lovers of the Constitution* they have a horror of violating the provision in that instrument of emitting *bills of credit*.

Their legal conscience did not affect them when they got hold of Mr. Wesley's money and thereby procured $2,500,000 of their guaranty, or of Mr. Williams' $417,000 of their bonds, which were guaranteed.

Now that nearly three millions of their guaranteed bonds have thus been retired and cancelled through the agency of Wesley and Williams, they do not offer to return them, nor do they provide another lawful, constitutional security in its place,

assuming the one they offered was invalid. The proof shows that their revenue bond scrip had at the time of the commencement of Mr. Williams' suit become utterly valueless in Wall street. Its property was destroyed in the market *for which it was created* by the State's subsequent legislation.

It had become worth just one cent on the dollar in Columbia, S. C.

All because of the legislation of South Carolina repudiating it.

(*c*). The learned Attorney General of South Carolina tells us, in his brief, that that State, in its Act of Dec. 24, 1878, has afforded a remedy to such scrip holders in their State. He quotes Tennessee *vs.* Sneed, 96 U. S., 69, and Antoni *vs.* Greenhow, 107 U. S., 769. A moment's consideration will show that such act affords no remedy for either Williams or Wesley, who are not taxpayers. Were they to adopt the learned Attorney General's suggestion—sell out their scrip to taxpayers there—they must necessarily do it at a great discount. The proof of sale of the Citizens' Saving Bank scrip for one half cent on the dollar (see fol.) shows that there, by the same act, the holder must advance and pay to the tax officers as much money as the face value of the scrip preliminarily—make a protest and sue to recover it back. Having done so, it will *be at their own expense*. No costs of suit are recoverable. Mandamus, injunction and other effective writs, the right to issue which was in existence at the time of the contract, are abolished. It affords no remedy whatever.

The very legislation destroys the value of the S. C. Rev. Bond Scrip as property; that, too, without the consent of the other contracting party.

This Court will surely perceive that by creating the distinction between taxpayers and non-taxpayers in the relief they may give to holders of S. C. Rev. Bond Scrip, they would be enabling the State

of South Carolina to enforce, by their unconstitutional legislation of 1873, in violation of their contract of March 4, 1872, the actual destruction of Messrs. Williams' and Wesley's property in $1,171,000 of their scrip, the State thereby with impunity violating Sec. 10 of Art. 1 of the Constitution, and Sec. 1 of Art. 14 of the Amendments.

III.—*To the fifth point of the appellant's brief add the following, viz.:*

8. *That the granting the relief in question, so far as it orders the State officers of South Carolina to levy the tax specified and provided for in the Act of March 4, 1872, constituting the contract in question, trenches upon the political power of the State of South Carolina, ought not to be an objection to affirming the decree in question.*

(a). We do not ask that the money be taken *now* out of the State Treasury, for that is money levied collected and put in there by other acts enacted since March 4, 1872, but *we do ask* that the State officers of South Carolina be put in motion to levy the tax *in the future*, agreed, by that act to be levied, to retire this script. The tax which in that act the State promised that its officers should collect when they made the contract in question, and that the same be set apart for that purpose. If that involves an exercise of political power, then it must and ought to be held that the State in question, by assenting to the Constitution, and by conferring in that instrument their assent to the indicial powers, gave to the Federal Courts which were created by and under the constitutional grant and by Congress, the necessary power to give judgment on questions arising under the Constitution and under the laws of the United States, to enforce them, otherwise constitutional obligations are of no force or effect. Every obligation incurred by the State, and every

question arising under Sec. 10 of Article 1 cannot be expounded and enforced. The refusal of the State officers to do an act or series of acts, which the State contracted they would do, would be justified under the subsequent legislation of one party to the contract in violation of their contract. *This would be said to raise a political question.* This Court would decline jurisdiction if that be the course pursued. The constitutional inhibition on States from violating their contracts would then be "a solemn mockery."

This would be particularly the case with respect to rights and property of parties affected and coming within the purview of the 1st Section of the 14th Amendment.

(*b*). This Court, sooner or later, must either retect jurisdiction in all cases involving coercion of State officers in matters of contract, or else exercise it, as was done in the first fifty years of this Court's existence.

See U. S. *vs.* Peters, 5 Cranch, 116—a most remarkable case.
Martin *vs* Hunter, 1 Wheat, 304.
McCulloh *vs.* State of Maryland, 4th Wheat, 316.
Cohens *vs.* Virginia, 6th Wheat, 678.
Osborn *vs.* The Bank of the U. S., 9 Wheaton, p.
See observations of Field, Justice, in Louisiana *vs.* Jumel, 107 U. S., 733, in his dissenting opinion.

(9). *It seems to us, and we say it with the greatest respect, that there is no escape from either horn of the dilemma.* Of late years nearly seventy-five millions of invested money have been practically destroyed by the unconstitutional and obstructive legislation of Lousiana, Tennessee, Virginia and now of South Carolina. These cases have become

so flagrant as that the intelligent mind instinctively flies to the amphictyonic council of the Western world—this present elevated tribunal—for redress. If this Court should feel constrained in the cases of of Williams & Wesley to hold that they cannot coerce State officers to do their manifest duty in matters which the State contracted, they should do on the ground *that the State is essentially the party attacked, and that the inhibition of the 11th Amendment prevents it.* Such inhibition does not apply to the case of the assignees of the Blue Ridge Railroad who do not come within that inhibition as we have above proved in the supplemental additions to the first points of the appellee's brief, and even in the Williams & Wesley cases if they should so decide. We respectfully submit that they should, by their judgment lay down in terms unmistakable the unconstitutional action of the State in question. So that the injured party may have the opportunity of appealing to the sober second thought of the State Courts of that State.

(10). Jumel *vs.* Lousiana, 107 U. S., p. 711, is a remarkable illustration of a total subversion of contract rights by a State—of the destruction of property owned by citizens of other States by a State—of the constraint this Court felt itself to be under in refusing to redress that wrong from supposed want of right to interfere with political power of a State. The necessary corrollary will be that States, by skillful legislation, may excite political questions, and thereby bid defiance to constitutional obligations and defeat this Court's action.

In the early ages of this Court's history this was done without effect in the most remarkable case of U. S. *vs.* Peters, 5 Cranch, 7; and Osborn *vs.* U. S., 9 Wheat, 4; Martin *vs.* Hunter, 1 Wheat, 304.

(11.) To order the State officers, charged with the collection of taxes, to receive this revenue bond scrip from tax payers, to order them to levy the

special tax to retire it; to order them to pay out of such special tax one-quarter of the revenue bond scrip each year until paid, are, and each of them is, not, we respectfully submit, interfering with the political machinery or action of the State of South Carolina, in the sense that political action is ordinarily understood.

This Court, by doing so, does not upset the political action of the State in the administration of its affairs. No governor is turned out of office; no state officers removed; no legislature deprived of its lawful functions.

Many contracting parties dislike to perform their contracts. The Courts set them in motion to perform or make them pay damages for non-performance. The State assented to the Constitution, which created that inhibition on it to violate its contracts, which gave judicial power to this Court to determine on such violation, and redress it. That inhibited it from destroying the property of the citizens of the Union. Yet, because of the 11th Amendment, it says, in effect, we deny this Court's jurisdiction; we will violate our contracts; we will destroy our creditors' property; we will compel our officers, by our unconstitutional legislation, to refrain from performing those functions we agreed that they should perform. We order our Attorney General to deny their Court's jurisdiction. We will do as Virginia and Louisiana have done, and you, the creditor, have no remedy. There is only one result on the part of this Court—either abnegate its rightful jurisdiction or carry it out to its fullest extent.

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